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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

vs.

KIK INTERACTIVE INC.

Defendant.

Case No. 19-cv-5244

Jury Trial Demanded

TB/jlk/sr

This is the Deposition of PAT CHAUKOS, in the
above-noted matter, taken at the offices of VICTORY
VERBATIM REPORTING SERVICES INC., Toronto-Dominion Centre,
Suite 900, 222 Bay Street, Toronto, Ontario, on the 5th day
of December, 2019.

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| <p>1 MR. CADIGAN: Before we get started,</p> <p>2 I am going to introduce...what's our next</p> <p>3 exhibit?</p> <p>4 MR. SCHLEGELMILCH: It depends. If</p> <p>5 you want to pick up after Mr. Heinke, it</p> <p>6 is 72. If you want to pick up after Mr.</p> <p>7 Rousmaniere, whose name I cannot</p> <p>8 pronounce, it's 107, and I have stickers</p> <p>9 here if you would like to use them.</p> <p>10 MR. CADIGAN: Great. Thank you.</p> <p>11 Yes, we will start with 107 then.</p> <p>12 MR. SCHLEGELMILCH: Yes. So 108 is</p> <p>13 the next.</p> <p>14 MR. CADIGAN: 108. Thank you.</p> <p>15 MR. SCHLEGELMILCH: I don't have</p> <p>16 those. I'm sorry. I don't have after</p> <p>17 108. I just have the earlier set.</p> <p>18 MR. CADIGAN: Okay. Do you have</p> <p>19 stickers by any chance? Can we...okay,</p> <p>20 great.</p> <p>21 MR. SCHLEGELMILCH: And Counsel, this</p> <p>22 is Exhibit 108?</p> <p>23 MR. CADIGAN: Yes.</p> <p>24</p> <p>25 --- EXHIBIT NO. 108: Pat Chaukos' Background as listed</p> | <p>1 you have various roles. But, I was there for</p> <p>2 three years, so when I left I was a senior at</p> <p>3 Pricewaterhouse.</p> <p>4 Q. And had you taken any accounting</p> <p>5 courses during your undergraduate time?</p> <p>6 A. Yes, it's a requirement. There's</p> <p>7 a number of courses that have to be done.</p> <p>8 Q. Okay. And at some point, you</p> <p>9 gained your CPA, is that right?</p> <p>10 A. I did.</p> <p>11 Q. And when was that?</p> <p>12 A. I think 1986.</p> <p>13 Q. Okay. And where were you</p> <p>14 authorized as a CPA? In what jurisdictions?</p> <p>15 A. Canada.</p> <p>16 Q. Canada. And do you still have</p> <p>17 that CPA?</p> <p>18 A. Yes.</p> <p>19 Q. After Pricewaterhouse Coopers,</p> <p>20 what did you do next?</p> <p>21 A. After Pricewaterhouse Coopers I</p> <p>22 was home for a period of time doing consulting</p> <p>23 work. It was during a time that I had my</p> <p>24 children.</p> <p>25 Q. And were you working for yourself</p> |
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| <p>1 on LinkedIn</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. I am handing you what we have</p> <p>5 marked as Exhibit 108, which was taken from...or</p> <p>6 actually, this is your background as listed on</p> <p>7 your LinkedIn account, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And as reflected here under your</p> <p>10 education, and as you indicated, you graduated</p> <p>11 from the University of Toronto?</p> <p>12 A. M'hmm.</p> <p>13 Q. And you did so in 1983?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what was your degree</p> <p>16 in?</p> <p>17 A. Bachelor of Commerce.</p> <p>18 Q. And you said thereafter you worked</p> <p>19 at Pricewaterhouse Coopers from 1983 to 1986, is</p> <p>20 that right?</p> <p>21 A. I did.</p> <p>22 Q. And what was your role there?</p> <p>23 A. I was...well, when you graduate</p> <p>24 and you are going towards your CPA, at the time it</p> <p>25 was called a CA, chartered accountant designation,</p> | <p>1 during that period?</p> <p>2 A. No. I was working for another</p> <p>3 company.</p> <p>4 Q. What was the name of that company?</p> <p>5 A. It was like...it was consulting</p> <p>6 and like, realty-type projects. But, it was part-</p> <p>7 time. For the most part, I wasn't working.</p> <p>8 Q. But, what was the name of the</p> <p>9 consulting firm that you were working for?</p> <p>10 A. I didn't really have a name. It</p> <p>11 is just I was consulting on various projects.</p> <p>12 Q. Okay. I'm sorry. My</p> <p>13 misunderstanding. I thought you were working for</p> <p>14 someone else. The consulting...</p> <p>15 A. I met clients.</p> <p>16 Q. ...that you were doing, were you</p> <p>17 self-employed as a consultant, or...</p> <p>18 A. Self-employed, part-time. Very</p> <p>19 part-time.</p> <p>20 Q. And you said you were working on</p> <p>21 real estate-type...</p> <p>22 A. Projects.</p> <p>23 Q. ...projects?</p> <p>24 A. Yes.</p> <p>25 Q. And what, in particular, were you</p> |

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| <p>1 doing on those types of projects?</p> <p>2 A. Just providing financial advice.</p> <p>3 Q. And how long did you do that?</p> <p>4 A. Until I went...I did that only for</p> <p>5 a period of time. I went to law school in 1993.</p> <p>6 Q. And where did you go to law</p> <p>7 school?</p> <p>8 A. Osgoode Hall in Toronto.</p> <p>9 Q. And you graduated from there?</p> <p>10 A. I did.</p> <p>11 Q. In what year?</p> <p>12 A. 1996.</p> <p>13 Q. And you are still a practising</p> <p>14 attorney?</p> <p>15 A. Yes.</p> <p>16 Q. And where are you authorized to</p> <p>17 practise law?</p> <p>18 A. Ontario.</p> <p>19 Q. Are you authorized to practise in</p> <p>20 any other jurisdictions?</p> <p>21 A. No.</p> <p>22 Q. And so, you are not a member of</p> <p>23 any Bar in the United States, correct?</p> <p>24 A. No.</p> <p>25 Q. And you are not authorized to</p> | <p>1 remember. Tax. I did real estate, securities.</p> <p>2 Various areas.</p> <p>3 Q. And after McCarthy Tetrault, your</p> <p>4 LinkedIn profile reflects that you went to Royal</p> <p>5 Mutual Funds Inc...</p> <p>6 A. Yes.</p> <p>7 Q. ...is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And your role there was what?</p> <p>10 A. I had various roles there. I</p> <p>11 started off as a manager in compliance. I became</p> <p>12 a senior manager. And by the end of it I was</p> <p>13 Vice-President of Risk Management and Compliance.</p> <p>14 Q. So starting off when you were</p> <p>15 manager in compliance, what were your</p> <p>16 responsibilities in that role?</p> <p>17 A. So I worked in the Toronto head</p> <p>18 office. I would oversee the chief compliance</p> <p>19 officers in each province, and the teams in each</p> <p>20 province. And I would develop compliance systems,</p> <p>21 or policies, or provide advice around compliance</p> <p>22 and risk management, as part of that role.</p> <p>23 Q. And at this time you were working</p> <p>24 for a mutual fund dealer, is that right?</p> <p>25 A. M'hmm.</p> |
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| <p>1 practise there, right?</p> <p>2 A. No.</p> <p>3 Q. And after law school, what did you</p> <p>4 do?</p> <p>5 A. After law school I went to</p> <p>6 McCarthy Tetrault as an articling student.</p> <p>7 Q. What is an articling student?</p> <p>8 A. It's a period of time that you</p> <p>9 have to do as a...in order to become, you know, I</p> <p>10 guess, barrister and solicitor in Ontario.</p> <p>11 Q. And what do you do in that role?</p> <p>12 A. Provide legal advice to various</p> <p>13 clients of the law firm.</p> <p>14 Q. And how does that role differ from</p> <p>15 that of a barrister or solicitor?</p> <p>16 A. Well, you are not officially a</p> <p>17 barrister and solicitor until you have passed the</p> <p>18 Bar admission course.</p> <p>19 Q. Was there a particular focus that</p> <p>20 you had when you were providing legal advice at</p> <p>21 McCarthy Tetrault?</p> <p>22 A. No. You had to do certain</p> <p>23 rotations, so it would have been in various areas.</p> <p>24 Q. And what areas?</p> <p>25 A. I don't recall. Corporate, I</p> | <p>1 MR. HARNISCH: You have to say "Yes"</p> <p>2 or "No".</p> <p>3 THE WITNESS: Yes. Sorry.</p> <p>4</p> <p>5 BY MR. CADIGAN:</p> <p>6 Q. And thereafter, you said that you</p> <p>7 were...so how long were you in that role? What</p> <p>8 years?</p> <p>9 A. I would have to look back. I</p> <p>10 believe I was there for three years, but I would</p> <p>11 have to look back.</p> <p>12 Q. You were there three years...</p> <p>13 A. Three...almost three-and-a-half</p> <p>14 years.</p> <p>15 Q. But, you said during that three-</p> <p>16 and-a-half years you had different titles, right?</p> <p>17 A. M'hmm.</p> <p>18 Q. Okay. And so, I am asking about</p> <p>19 your first title. Do you recall how long you were</p> <p>20 in that first role as manager...</p> <p>21 A. I don't recall.</p> <p>22 Q. Even generally do you recall? No?</p> <p>23 A. Probably, a year, year-and-a-half.</p> <p>24 Q. Okay. And then, thereafter, you</p> <p>25 were in a senior manager role, right?</p> |

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| <p>1 A. Yes.</p> <p>2 Q. And generally, how long were you</p> <p>3 in that role?</p> <p>4 A. Probably, about a year, a year-</p> <p>5 and-a-half.</p> <p>6 Q. Okay. And thereafter, you</p> <p>7 received another promotion, is that right?</p> <p>8 A. I did.</p> <p>9 Q. And to what position?</p> <p>10 A. Vice-President Risk Management and</p> <p>11 Compliance.</p> <p>12 Q. Okay. And how did that role</p> <p>13 differ from the roles that you had had previously?</p> <p>14 A. Obviously, more responsibility as</p> <p>15 a result of the work I had done previously.</p> <p>16 Q. Okay. And that role again was</p> <p>17 overseeing compliance for the mutual fund</p> <p>18 distributor, correct?</p> <p>19 A. Yes. And the asset manager.</p> <p>20 Q. And then, in November 2001, you</p> <p>21 joined the Ontario Securities Commission, is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And what prompted that move?</p> <p>25 A. What prompted that move?</p> | <p>1 required to be registered under Canadian law?</p> <p>2 A. If they are in the business of</p> <p>3 trading, or dealing, or acting as a fund manager,</p> <p>4 yes.</p> <p>5 Q. Okay. And what did you do in that</p> <p>6 role?</p> <p>7 A. In the first role?</p> <p>8 Q. Yes.</p> <p>9 A. I...there was a need for legal</p> <p>10 advice to the compliance team, because a number of</p> <p>11 the operational issues that came up in compliance</p> <p>12 reviews required legal input.</p> <p>13 Q. And how long were you in that</p> <p>14 role, the senior accountant role?</p> <p>15 A. I don't recall exactly.</p> <p>16 Q. I'm sorry, it was senior</p> <p>17 accountant and counsel, is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And, at some point, you received a</p> <p>20 new title, right?</p> <p>21 A. I had multiple titles at the OSC.</p> <p>22 The next title was senior legal counsel, senior</p> <p>23 accountant. Then, it was assistant manager, and</p> <p>24 then it was manager in the compliance and</p> <p>25 registrant regulation branch, which was a newly</p> |
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| <p>1 Q. Yes.</p> <p>2 A. Actually, trying to, quite</p> <p>3 frankly, just a better balance in terms of</p> <p>4 lifestyle.</p> <p>5 Q. And so, what role did you take on</p> <p>6 at the...and again, if you don't mind, during the</p> <p>7 day we are going to call it the OSC, is that okay?</p> <p>8 A. Yes.</p> <p>9 Q. And what role did you take on at</p> <p>10 the OSC when you first started?</p> <p>11 A. I was actually in a novel role,</p> <p>12 senior accountant and legal counsel in the</p> <p>13 compliance area.</p> <p>14 Q. Compliance?</p> <p>15 A. M'hmm.</p> <p>16 Q. And when you say compliance, what</p> <p>17 entities were you overseeing compliance for?</p> <p>18 A. Any firm that would be required to</p> <p>19 be registered or licensed with the OSC.</p> <p>20 Q. And what types of firms are those?</p> <p>21 Are those broker-dealers, investment advisors?</p> <p>22 A. It could be dealers, it could be</p> <p>23 what we call portfolio managers, and it could be</p> <p>24 investment fund managers, as well.</p> <p>25 Q. Any operating companies that are</p> | <p>1 formed branch. And then, I took on the role...</p> <p>2 Q. If you don't mind, I want to go</p> <p>3 through some of these things...</p> <p>4 A. Okay.</p> <p>5 Q. ...and then we can pick...</p> <p>6 A. Sure.</p> <p>7 Q. ...it up later. So before when</p> <p>8 you were senior legal counsel, and then assistant</p> <p>9 manager, that was, again, within the compliance</p> <p>10 branch?</p> <p>11 A. The assistant, yes. Both of those</p> <p>12 were in the compliance branch. Capital markets</p> <p>13 branch actually. Compliance was a key area of</p> <p>14 capital markets at the time.</p> <p>15 Q. And how did you roles change as</p> <p>16 you took on these new titles?</p> <p>17 A. Well, as assistant manager of the</p> <p>18 dealer team, we were looking at many registered</p> <p>19 firms that are registered as what are called</p> <p>20 exempt market dealers, or scholarship plan</p> <p>21 dealers. Pretty much any dealers outside of those</p> <p>22 regulated by IIROC which is our SRO, similar to</p> <p>23 FINRA in the States.</p> <p>24 Q. And what does IIROC stand for?</p> <p>25 A. Investment Industry</p> |

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| <p>1 Regulatory...okay...Investment Industry of Canada, 2 something like that...Regulatory Organization of 3 Canada...Investment Industry Regulatory 4 Organization of Canada. 5 Q. And you said it was an SRO, so a 6 self-regulatory organization? 7 A. Yes. 8 Q. And what was it regulating? 9 A. Broker-dealers. 10 Q. So when you had the role as 11 assistant manager, your sole focus was broker- 12 dealers at that time? 13 A. No. It would be dealers outside 14 of the ones that are the broker-dealers. So it 15 would be any dealer. We are set up a little 16 differently in Canada. So the broker-dealers, the 17 SRO is IIROC, so they would do primarily the 18 compliance role. And then, any other type of 19 dealer, my team would go out and do the compliance 20 reviews and look at operations and ensure that 21 firms are compliant with securities regulations. 22 Q. Okay. And I guess my question 23 was, you were looking though exclusively at 24 dealers? 25 A. Not necessarily. In that role the</p> | <p>1 A. Yes. 2 Q. And then, in October 2016, you 3 took on the role as chief of the OSC LaunchPad, is 4 that right? 5 A. Yes. 6 Q. I want to talk about that in a 7 second. But, going back to the OSC, the OSC's 8 authority to regulate comes from the Securities 9 Act of Ontario, and the Commodity Futures Act, is 10 that right? 11 A. Yes. 12 Q. Okay. And its jurisdiction is 13 limited to administering and enforcing securities 14 laws in the province of Ontario in Canada, 15 correct? 16 A. Yes. 17 Q. It does not have jurisdiction over 18 securities laws in other provinces, right? 19 A. No. 20 Q. And the securities laws that we 21 are talking about are the ones that was authorized 22 under the Securities Act of Ontario, and the 23 Commodity Futures Act of Ontario, correct? 24 A. Yes. 25 Q. Okay. Canada has no federal</p> |
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| <p>1 way we work is, as part of the management team, 2 you are looking across. But, my team primarily 3 would do compliance reviews of the dealers, yes. 4 Q. Okay. And you don't recall how 5 long you had that title until? 6 A. I think it was probably a couple 7 years before I become manager. 8 Q. And do you recall when you became 9 manager? 10 A. No. 11 Q. Okay. And then, you said you 12 became manager of the compliance and registration 13 group? 14 A. Registrant regulation branch. It 15 was a newly organized branch to the OSC. 16 Q. And what was your role there? 17 A. As part of the management team we 18 are responsible for the licensing or registration 19 of all firms, and compliance oversight of all 20 licensed or registered firms. So that would 21 include fund managers, portfolio managers and 22 dealers. 23 Q. And your LinkedIn profile says you 24 had that role until October 2016, is that 25 accurate?</p> | <p>1 securities law, right? No law that governs all of 2 Canada. 3 A. No. We work together with our 4 provincial securities counterparts, and that is 5 what is called the Canadian Securities 6 Administrators, or CSA. 7 Q. And as you just described, Canada 8 has no one national securities regulator, right? 9 A. No. 10 Q. And, of course, OSC does not have 11 authority to regulate issues under U.S. law, does 12 it? 13 A. No. 14 Q. And the securities laws in the 15 U.S. are obviously different than those in Canada, 16 right? 17 MR. HARNISCH: Objection. You can 18 answer. 19 THE WITNESS: Can you repeat the 20 question? 21 22 BY MR. CADIGAN: 23 Q. Yes. The securities laws in 24 Ontario are obviously different than the 25 securities laws in the United States, correct?</p> |

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| <p>1 A. Correct.</p> <p>2 MR. HARNISCH: Objection.</p> <p>3</p> <p>4 BY MR. CADIGAN:</p> <p>5 Q. And the Securities Act of Ontario</p> <p>6 is not the same as the U.S. Exchange Act, or the</p> <p>7 Securities Act of the United States, is that</p> <p>8 right?</p> <p>9 MR. HARNISCH: Objection.</p> <p>10 THE WITNESS: Yes.</p> <p>11</p> <p>12 BY MR. CADIGAN:</p> <p>13 Q. Now, are you familiar with what</p> <p>14 the OSC's public interest jurisdiction is?</p> <p>15 A. Yes. Somewhat, yes.</p> <p>16 Q. Okay. What is that?</p> <p>17 A. I mean, we have a public interest</p> <p>18 mandate under the Act.</p> <p>19 Q. And under Section 127 of the</p> <p>20 Ontario Securities Act, the OSC has power to</p> <p>21 exercise its public interest jurisdiction to issue</p> <p>22 sanctions, even where there's been no violation of</p> <p>23 the Act, regulations thereunder, or policy</p> <p>24 statements, is that right?</p> <p>25 MR. HARNISCH: Objection. I mean,</p> | <p>1 essence, testifying on U.S. law. And so,</p> <p>2 I appreciate that and you know, if we get</p> <p>3 into those areas, obviously, you know,</p> <p>4 you can do what you need to do. But, I</p> <p>5 mean, to the extent that her testimony</p> <p>6 comes up at all, I want to make sure that</p> <p>7 I have a record that makes it clear that</p> <p>8 she shouldn't be testifying at all in</p> <p>9 this matter.</p> <p>10 MR. HARNISCH: I mean, obviously, you</p> <p>11 can ask whatever you want.</p> <p>12 MR. CADIGAN: Yes.</p> <p>13 MR. HARNISCH: I just want to, kind</p> <p>14 of..</p> <p>15 MR. CADIGAN: No, I appreciate that.</p> <p>16 MR. HARNISCH: ...give you a heads-</p> <p>17 up. I'm not sure how deep you want to go</p> <p>18 into those areas, but just, kind of, want</p> <p>19 to make sure there aren't surprises if we</p> <p>20 are going to be going much deeper.</p> <p>21 MR. CADIGAN: Right. Okay. And</p> <p>22 again, I appreciate that.</p> <p>23</p> <p>24 BY MR. CADIGAN:</p> <p>25 Q. I'm going to ask the question</p> |
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| <p>1 obviously, I want to let you go through</p> <p>2 background and some foundational stuff,</p> <p>3 but I did mention in our e-mails early on</p> <p>4 about what we were prepared to have Pat</p> <p>5 talk about. One of the things that we</p> <p>6 are not going to have her do is</p> <p>7 essentially come in and talk as an expert</p> <p>8 on securities law. So, I mean, some of</p> <p>9 these basic things, you want to say the</p> <p>10 Ontario regulatory scheme is different</p> <p>11 from the U.S., that's great, but if we</p> <p>12 are going to go down a road getting into</p> <p>13 the, you know, minutiae of, you know,</p> <p>14 public interest jurisdiction and things</p> <p>15 like that, I would like to spend our</p> <p>16 time, kind of, more focused to the issues</p> <p>17 that Pat can talk about with first-hand</p> <p>18 knowledge, you know, relevant to the</p> <p>19 litigation.</p> <p>20 MR. CADIGAN: Yes. And as I think I</p> <p>21 mentioned to you, I don't think her</p> <p>22 testimony is relevant for a number of</p> <p>23 different reasons, and we wouldn't plan</p> <p>24 to call her for all of those reasons,</p> <p>25 including the fact that she is, in</p> | <p>1 again. Under Section 127 of the Ontario</p> <p>2 Securities Act, the OSC has the power to exercise</p> <p>3 its public interest jurisdiction to issue</p> <p>4 sanctions, even when there's been no violation of</p> <p>5 the Act, regulations thereunder, or policy</p> <p>6 statements, is that right?</p> <p>7 A. I don't know if those are the</p> <p>8 exact words, but that sounds accurate.</p> <p>9 Q. And there's no constitutional</p> <p>10 right to a jury in OSC civil litigation, is there?</p> <p>11 A. I would have to defer to counsel</p> <p>12 on that.</p> <p>13 Q. But, you're not aware?</p> <p>14 A. Not that I'm aware, no.</p> <p>15 Q. Do you know whether the insider</p> <p>16 trading laws are different in the United States</p> <p>17 than in Ontario?</p> <p>18 MR. HARNISCH: Objection.</p> <p>19 THE WITNESS: I don't know.</p> <p>20</p> <p>21 BY MR. CADIGAN:</p> <p>22 Q. You mentioned that in October</p> <p>23 2016, you took on the position as chief of</p> <p>24 LaunchPad. What is LaunchPad?</p> <p>25 A. LaunchPad is a dedicated team at</p> |

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| <p>1 the OSC that is there to help support Fintech</p> <p>2 businesses navigate the regulatory requirements.</p> <p>3 And what that typically means is that a business</p> <p>4 will come in and talk to us about how securities</p> <p>5 regulation applies to their business.</p> <p>6 Q. And from the outset, did LaunchPad</p> <p>7 have responsibility for initiatives related to</p> <p>8 blockchain technology?</p> <p>9 A. That's a novel Fintech business,</p> <p>10 so yes, it would look at blockchain technology-</p> <p>11 type businesses.</p> <p>12 Q. And when you joined LaunchPad as a</p> <p>13 chief in October 2016, did you understand that</p> <p>14 LaunchPad had responsibility for initiatives</p> <p>15 related to blockchain technology?</p> <p>16 A. The mandate of the team is to help</p> <p>17 support novel Fintech businesses. What we found</p> <p>18 were a number of blockchain technology businesses</p> <p>19 were coming in to request support from our team.</p> <p>20 Q. M'hmm. And when did they first</p> <p>21 start coming to LaunchPad to request assistance?</p> <p>22 A. It would have been certainly</p> <p>23 before March of 2017, so probably late 2016, early</p> <p>24 2017.</p> <p>25 Q. LaunchPad, what branch does that</p> | <p>1 portfolio managers, investment fund managers, is</p> <p>2 that right?</p> <p>3 A. Right.</p> <p>4 Q. How many people reported to you</p> <p>5 when you became chief of LaunchPad?</p> <p>6 A. So the way the team works is we</p> <p>7 actually have a virtual team. So we have members</p> <p>8 that are part of the core team full-time, and then</p> <p>9 we also have subject matter experts that we draw</p> <p>10 on from each of the operational branches, to come</p> <p>11 in, depending on what the business is that we are</p> <p>12 helping support. So it could be market</p> <p>13 regulation, corporate finance, investment funds.</p> <p>14 There's various members on the team.</p> <p>15 Q. Ma'am, when you say that you help</p> <p>16 Fintech entities navigate the regulatory</p> <p>17 framework, do you also advise them when they don't</p> <p>18 need to register?</p> <p>19 A. No. We don't provide legal advice</p> <p>20 on when they don't need to register. If we have</p> <p>21 concerns that they should be registered, we raise</p> <p>22 those concerns.</p> <p>23 Q. When you took on the role as</p> <p>24 chief, did you have any role in setting policy at</p> <p>25 the OSC?</p> |
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| <p>1 fall under?</p> <p>2 A. In the corporate structure?</p> <p>3 Q. At OSC, yes.</p> <p>4 A. Under compliance and registrant</p> <p>5 regulation.</p> <p>6 Q. When you became its first chief,</p> <p>7 who did you report to?</p> <p>8 A. I reported to Debra Foubert who is</p> <p>9 the director, but I also reported to our chair,</p> <p>10 because this was a new initiative.</p> <p>11 Q. I'm sorry. Could you spell that</p> <p>12 name again?</p> <p>13 A. Debra, D-E-B-R-A, Foubert, F-O-U-</p> <p>14 B-E-R-T.</p> <p>15 Q. And what was her title?</p> <p>16 A. Director of the compliance and</p> <p>17 registrant regulation.</p> <p>18 Q. And when you say compliance and</p> <p>19 registrant regulation, what is its role? What is</p> <p>20 its scope?</p> <p>21 A. Similar to what I described</p> <p>22 earlier. It's overseeing all firms and</p> <p>23 individuals that are licensed or registered with</p> <p>24 us.</p> <p>25 Q. Okay. As you mentioned, dealers,</p> | <p>1 A. I mean, throughout all of my</p> <p>2 roles, there's been roles in setting policy.</p> <p>3 Q. So in your role at LaunchPad, you</p> <p>4 had a role in setting policy?</p> <p>5 A. That wasn't the mandate of the</p> <p>6 team. The mandate of the team is to help support</p> <p>7 Fintech innovation in Ontario, and to help</p> <p>8 Canadian businesses in those types of areas, and</p> <p>9 to help them navigate regulatory requirements,</p> <p>10 because a number of these novel Fintech businesses</p> <p>11 don't understand how regulation applies to them.</p> <p>12 Q. Okay. And based upon that answer,</p> <p>13 I imagine the answer to this question is no, but I</p> <p>14 take it then that LaunchPad has no role in helping</p> <p>15 to structure, or publish guidance to the industry?</p> <p>16 A. No. We did that...we do that.</p> <p>17 Q. You do that? And so, have you</p> <p>18 released guidance or had a role as release and</p> <p>19 guidance for the OSC?</p> <p>20 A. In this role?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Have you done so at all in</p> <p>24 the blockchain or crypto space?</p> <p>25 A. Yes.</p> |

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| <p>1 Q. And what guidance have you had a</p> <p>2 role in helping to craft?</p> <p>3 A. Well, we first started with a</p> <p>4 media release in March of 2017, where we raised to</p> <p>5 businesses that are in this space, they need to be</p> <p>6 thinking about both registration, prospectus and</p> <p>7 marketplace requirements. We issued CSA notice in</p> <p>8 August of 2017 on cryptocurrency offerings, and we</p> <p>9 talk about a number of areas. And then, we also</p> <p>10 did another notice about a year later. And most</p> <p>11 recently, we have done a consultation paper on</p> <p>12 crypto asset trading platforms. And those are the</p> <p>13 key ones. We have also done investor warnings and</p> <p>14 other releases related to the crypto asset space</p> <p>15 and blockchain.</p> <p>16 Q. Thank you. And we will get to</p> <p>17 those a little bit later. Prior to taking on the</p> <p>18 role as chief of the LaunchPad...actually, let me</p> <p>19 step back. You mentioned some of the</p> <p>20 responsibilities with LaunchPad. In particular,</p> <p>21 what were your responsibilities as the chief of</p> <p>22 LaunchPad?</p> <p>23 A. To lead the team, to lead the</p> <p>24 initiative. Obviously, this was something new</p> <p>25 that the regulators hadn't done before, so I built</p> | <p>1 with the products that they sell. But, I also did</p> <p>2 a secondment in corporate finance for a period of</p> <p>3 time many years ago. I think like 2003.</p> <p>4 Q. And that was at the OSC?</p> <p>5 A. Yes.</p> <p>6 Q. And during the secondment, what</p> <p>7 was your role there?</p> <p>8 A. Reviewing prospectuses and</p> <p>9 providing comment letters to law firms.</p> <p>10 Q. How long was that secondment?</p> <p>11 A. I don't recall. It was short.</p> <p>12 Less than six months.</p> <p>13 Q. And prior to taking on the role as</p> <p>14 chief of LaunchPad, had you had any experience</p> <p>15 with crypto or blockchain companies?</p> <p>16 A. Crypto or blockchain companies? I</p> <p>17 don't recall. I think the first exposure probably</p> <p>18 would have been as part of LaunchPad. I did have</p> <p>19 exposure though to how Fintech innovation was</p> <p>20 changing the business models for many of the</p> <p>21 businesses we were dealing with as part of my role</p> <p>22 as manager in compliance and registrant</p> <p>23 regulation.</p> <p>24 Q. What was your understanding of why</p> <p>25 you were selected for the role?</p> |
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| <p>1 the team, put it together. And as part of that we</p> <p>2 raise awareness in the Fintech community, so that</p> <p>3 involves speaking events and being at various</p> <p>4 Fintech community events, as well as providing</p> <p>5 direct support to businesses. That's a key part</p> <p>6 of what we do. And we do that directly with the</p> <p>7 firms sitting across the table from the firms and</p> <p>8 providing...helping them navigate regulatory</p> <p>9 requirements.</p> <p>10 And then, our final mandate is to</p> <p>11 modernize regulation, because, obviously,</p> <p>12 regulation was built at a time where it was more</p> <p>13 face to face, and we were seeing a lot more in</p> <p>14 terms of Fintech innovation, and how financial</p> <p>15 services are delivered to consumers.</p> <p>16 Q. And prior to your role as chief of</p> <p>17 LaunchPad, had you had any experience with</p> <p>18 corporate finance?</p> <p>19 A. Yes.</p> <p>20 Q. What experience was that?</p> <p>21 A. Well, throughout our role, any</p> <p>22 time you are looking at a firm in any of the roles</p> <p>23 in compliance and registrant regulation, the firms</p> <p>24 are selling products, so you are looking at the</p> <p>25 products that they sell. So you have experience</p> | <p>1 A. Because my team and I had dealt</p> <p>2 directly with many of these firms and many of</p> <p>3 these innovations that we were seeing in the</p> <p>4 space. So it was either online advising firms,</p> <p>5 online trading firms, crowdfunding portals. You</p> <p>6 know, there's a variety. But, we had seen how</p> <p>7 technology was changing, how financial services</p> <p>8 were being delivered to investors.</p> <p>9 Q. Now, after a year in the role, in</p> <p>10 October 2017, you were named Deputy Director, is</p> <p>11 that right?</p> <p>12 A. Yes.</p> <p>13 Q. And how is that position different</p> <p>14 than Chief?</p> <p>15 A. It's not. It was just a title</p> <p>16 change.</p> <p>17 Q. Do you know why there was the</p> <p>18 title change?</p> <p>19 A. It was for internal purposes.</p> <p>20 Q. And you remain Deputy Director,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, working at the OSC, when do</p> <p>24 you first come to recognize that cryptocurrencies</p> <p>25 could be subject to Canadian securities laws?</p> |

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| <p>1 A. Late 2016, early 2017.</p> <p>2 Q. And how did you come to recognize</p> <p>3 that?</p> <p>4 A. Because we had a number of firms</p> <p>5 that had come in, plus we were also seeing a</p> <p>6 number of firms that were taking the position that</p> <p>7 they were currencies and not securities. And as</p> <p>8 an organization, we didn't agree with that</p> <p>9 position.</p> <p>10 Q. And in those instances, what did</p> <p>11 you advise them?</p> <p>12 MR. HARNISCH: Objection. Give a</p> <p>13 very general answer. Don't get into</p> <p>14 anything specific about any type of</p> <p>15 company.</p> <p>16 THE WITNESS: Yes. I mean, we</p> <p>17 wouldn't talk about specific firms.</p> <p>18</p> <p>19 BY MR. CADIGAN:</p> <p>20 Q. No. And I'm not looking for that.</p> <p>21 A. Okay. Repeat the question.</p> <p>22 Q. Yes. And I mean, you talked</p> <p>23 generally about the fact that crypto companies</p> <p>24 were coming in and taking the position that their</p> <p>25 products were currencies and not securities...</p> | <p>1 is a security?</p> <p>2 MR. HARNISCH: Objection.</p> <p>3 THE WITNESS: Sorry. Am I responding</p> <p>4 then? Yes?</p> <p>5 MR. HARNISCH: If you know, yes. Do</p> <p>6 you have a "Yes" or "No" answer, or you</p> <p>7 don't know?</p> <p>8 THE WITNESS: I don't know. Can I</p> <p>9 ask a question?</p> <p>10 MR. HARNISCH: No.</p> <p>11 THE WITNESS: Okay. No.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. You don't know. I just want to</p> <p>15 clarify.</p> <p>16 A. I can tell you that we on the OSC</p> <p>17 LaunchPad team, take the position that Bitcoin</p> <p>18 itself is a commodity, but what we have seen, and</p> <p>19 how it's traded, in many instances it is a</p> <p>20 security or derivative.</p> <p>21 Q. Has the OSC taken a unified</p> <p>22 position regarding whether or not Bitcoin is a</p> <p>23 security?</p> <p>24 MR. HARNISCH: Objection.</p> <p>25 THE WITNESS: I would only do it if</p> |
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| <p>1 A. Right.</p> <p>2 Q. ...and you disagreed with that</p> <p>3 position?</p> <p>4 A. Right.</p> <p>5 Q. And my question to you is, what</p> <p>6 did you advise them, given that?</p> <p>7 A. Well, in most instances, we would</p> <p>8 tell them that we believe it's a security and that</p> <p>9 they would be subject to securities regulation.</p> <p>10 Q. And prior to the March 2017</p> <p>11 release, the OSC had published nothing publicly in</p> <p>12 that regard, correct?</p> <p>13 A. No.</p> <p>14 Q. When did you first become aware of</p> <p>15 Bitcoin?</p> <p>16 A. I don't recall.</p> <p>17 Q. Was that years ago, decades ago, a</p> <p>18 decade ago?</p> <p>19 A. Well, not decades, but years ago,</p> <p>20 yes.</p> <p>21 Q. Okay. How many years, generally?</p> <p>22 A. I don't know. Probably 2015,</p> <p>23 2016. Around that time.</p> <p>24 Q. Okay. And to your knowledge, has</p> <p>25 the OSC taken a position regarding whether Bitcoin</p> | <p>1 it's unified, yes.</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. So it's the unified position of</p> <p>5 the OSC that Bitcoin is a commodity?</p> <p>6 MR. SCHLEGELMILCH: Objection.</p> <p>7 MR. HARNISCH: Objection. Asked and</p> <p>8 answered. And I don't want to be going</p> <p>9 down any more Q&A about Bitcoin unless I</p> <p>10 can become convinced that this is</p> <p>11 actually relevant...</p> <p>12 THE WITNESS: M'hmm.</p> <p>13 MR. HARNISCH: ...to the litigation.</p> <p>14 MR. CADIGAN: Well, I think as I have</p> <p>15 indicated, none of this is relevant. And</p> <p>16 so...</p> <p>17 MR. HARNISCH: Okay.</p> <p>18 MR. CADIGAN: ...to the extent that</p> <p>19 we are getting questions on this, we are</p> <p>20 going to be asking questions that we can</p> <p>21 ascertain exactly why this is not</p> <p>22 relevant here.</p> <p>23 MR. HARNISCH: Given your position</p> <p>24 that this is not relevant, then I'm</p> <p>25 going...Pat, I would not answer any more</p> |

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| <p>1 questions about Bitcoin and the OSC's</p> <p>2 position on Bitcoin.</p> <p>3 MR. CADIGAN: So are you instructing</p> <p>4 you her not to answer that question...</p> <p>5 MR. HARNISCH: Yes.</p> <p>6 MR. CADIGAN: ...on relevance</p> <p>7 grounds?</p> <p>8 MR. HARNISCH: In case that wasn't</p> <p>9 clear, I am instructing her not to answer</p> <p>10 for any number of reasons...relevant.</p> <p>11 It's beyond the scope of our agreement to</p> <p>12 be here voluntarily. And getting into</p> <p>13 OSC positions on certain issues, no, I</p> <p>14 don't want her testifying about things</p> <p>15 that may be public and non-public and</p> <p>16 confidential within the OSC. It's not</p> <p>17 clear how it all is necessary for what</p> <p>18 you need. So for all of those reasons,</p> <p>19 at a minimum, yes, I am instructing Pat</p> <p>20 not to answer.</p> <p>21 MR. CADIGAN: And again, we don't</p> <p>22 have to get aggressive on this. I mean,</p> <p>23 I am trying to...I'm laying out the</p> <p>24 position we laid out previously. We have</p> <p>25 no agreement regarding the scope of her</p> | <p>1 with the SEC and before the court, and I</p> <p>2 will leave that all in your various</p> <p>3 capable hands. But, I think I was clear</p> <p>4 on the topics pursuant to which Pat would</p> <p>5 appear voluntarily today about and you</p> <p>6 know, we agreed to go forward, and I</p> <p>7 think we are clear that those were the</p> <p>8 topics that we would be limiting her</p> <p>9 testimony to. Again, ask away, just</p> <p>10 don't...</p> <p>11 MR. CADIGAN: Yes.</p> <p>12 MR. HARNISCH: ...be surprised if it</p> <p>13 goes beyond that, that the instruction is</p> <p>14 going to be that's beyond the scope of</p> <p>15 our willingness to appear here</p> <p>16 voluntarily. That's all.</p> <p>17 MR. CADIGAN: And if I recall, the</p> <p>18 topic that you indicated was Ms. Chaukos'</p> <p>19 discussions, communications with Kik, or</p> <p>20 its counsel and that alone?</p> <p>21 MR. HARNISCH: That is correct.</p> <p>22 MR. CADIGAN: Okay. And if you are</p> <p>23 instructing her not to answer, I just ask</p> <p>24 that...again, because I would like to</p> <p>25 know what those grounds are if you are</p> |
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| <p>1 testimony today. You have taken the</p> <p>2 position that you had asked whether we</p> <p>3 would limit the scope of that testimony</p> <p>4 and we did not agree to do so. That</p> <p>5 said, I said we were going to ask our</p> <p>6 questions and she can answer them, and</p> <p>7 you can either object or instruct her not</p> <p>8 to answer as is the case, depending upon</p> <p>9 how you choose. I mean, I would say that</p> <p>10 to the extent that her testimony in any</p> <p>11 way might suggest some, sort of,</p> <p>12 indication regarding whether a statement</p> <p>13 that might have implications for U.S.</p> <p>14 securities laws...I mean, we suggest that</p> <p>15 we would be entitled to probe the basis</p> <p>16 for that, including the knowledge of</p> <p>17 Bitcoin, crypto and the relation to the</p> <p>18 securities laws.</p> <p>19 MR. HARNISCH: Okay. You're free to,</p> <p>20 obviously, ask whatever you want and we</p> <p>21 will...</p> <p>22 MR. CADIGAN: Yes.</p> <p>23 MR. HARNISCH: ...advise Pat</p> <p>24 accordingly, and then you can, obviously,</p> <p>25 make your positions known more broadly</p> | <p>1 instructing her not to answer.</p> <p>2 MR. HARNISCH: I will take it case by</p> <p>3 case, sure.</p> <p>4 MR. CADIGAN: I appreciate that.</p> <p>5 MR. HARNISCH: I think I have made it</p> <p>6 clear on this one, and where we are with</p> <p>7 going further with the Q&A on Bitcoin</p> <p>8 that I believe we have reached our limit</p> <p>9 for the reasons I have articulated.</p> <p>10 MR. CADIGAN: And so the record is</p> <p>11 clear, I heard that you were instructing</p> <p>12 her not to answer on the ground that it</p> <p>13 was not relevant and beyond the scope of</p> <p>14 the terms in which she agreed to appear</p> <p>15 today?</p> <p>16 MR. HARNISCH: Right. And that</p> <p>17 potentially a full answer to your</p> <p>18 question could implicate internal</p> <p>19 discussions and deliberations within the</p> <p>20 OSC that are non-public and confidential.</p> <p>21</p> <p>22 BY MR. CADIGAN:</p> <p>23 Q. Has the OSC ever taken a public</p> <p>24 position regarding whether Bitcoin is a security?</p> <p>25 A. Only more recently in our</p> |

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| <p>1 consultation paper.</p> <p>2 Q. And when was that? What was that</p> <p>3 date?</p> <p>4 A. I don't recall. I think we have</p> <p>5 done it in a couple notices, actually. I would</p> <p>6 have to look at the notices.</p> <p>7 Q. And what is that public position</p> <p>8 on whether Bitcoin is a security?</p> <p>9 A. We have acknowledged that the</p> <p>10 Bitcoin itself is a commodity. However, we have</p> <p>11 taken the position that on the trading platforms</p> <p>12 that we have seen, how the Bitcoin was traded,</p> <p>13 could make it an investment contract, or a</p> <p>14 security, or a derivative.</p> <p>15 Q. And has the OSC taken a public</p> <p>16 position regarding whether Ether is a security?</p> <p>17 A. I don't believe we have.</p> <p>18 MR. CADIGAN: Actually, if we could</p> <p>19 see the next exhibit. Can I have this</p> <p>20 marked as Exhibit 109?</p> <p>21</p> <p>22 - EXHIBIT NO. 109: Release from the OSC, dated March</p> <p>23 8, 2017</p> <p>24</p> <p>25 BY MR. CADIGAN:</p> | <p>1 Q. And this release doesn't set forth</p> <p>2 any guidance regarding specific tests as to what</p> <p>3 makes distributed ledger technology a security or</p> <p>4 not, is that right?</p> <p>5 A. No. It was to raise awareness.</p> <p>6 Q. Now, in connection with the</p> <p>7 publication of this guidance, isn't it true that</p> <p>8 you stated that the OSC was keen to support this</p> <p>9 type of innovation?</p> <p>10 A. Yes.</p> <p>11 Q. And you also said that the OSC</p> <p>12 welcomed the opportunity to work with these</p> <p>13 businesses and help them understand and navigate</p> <p>14 potential regulatory requirements, right?</p> <p>15 A. Yes.</p> <p>16 Q. And what do you mean by work with</p> <p>17 these businesses?</p> <p>18 A. Our support role. So we provide</p> <p>19 direct support to businesses, so they have an</p> <p>20 opportunity to come in and talk to the regulator,</p> <p>21 and understand what regulatory requirements would</p> <p>22 apply, and how they might comply with certain</p> <p>23 requirements.</p> <p>24 Q. To your knowledge, has LaunchPad</p> <p>25 provide guidance to any company about how to</p> |
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| <p>1 Q. I am showing you what's been</p> <p>2 marked as...</p> <p>3 MR. HARNISCH: I think the official</p> <p>4 one is about to come over.</p> <p>5 MR. CADIGAN: Right.</p> <p>6</p> <p>7 BY MR. CADIGAN:</p> <p>8 Q. Okay. I'm now handing you what</p> <p>9 has been marked as Exhibit 109. For the record,</p> <p>10 this is a March 8th, 2017 release from the OSC.</p> <p>11 This is the March 2017 release regarding</p> <p>12 blockchain technologies that you mentioned</p> <p>13 previously, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And what was the purpose of this</p> <p>16 release?</p> <p>17 A. As I mentioned earlier, we found</p> <p>18 that a number of companies were taking the</p> <p>19 position that because they were using blockchain,</p> <p>20 or distributed ledger technologies, that</p> <p>21 securities regulation doesn't apply. So the</p> <p>22 purpose of this release was to communicate to the</p> <p>23 public that in many instances we had seen that</p> <p>24 actually securities regulations would apply to</p> <p>25 these businesses.</p> | <p>1 conduct and ICO in a way that does not require</p> <p>2 registration and the filing of prospectuses?</p> <p>3 A. Yes, we have.</p> <p>4 Q. When was that?</p> <p>5 A. Well, it would have been around</p> <p>6 the same time. 2017...sometime in 2017. We have</p> <p>7 had a number of businesses, but there are public</p> <p>8 decisions that are on our website on this topic.</p> <p>9 Q. But by public decisions, you mean</p> <p>10 decisions with respect to companies in which you</p> <p>11 told them how to conduct an ICO in a way that did</p> <p>12 not require registration or filing a prospectus?</p> <p>13 A. No, no, no. We provided exemptive</p> <p>14 relief in those circumstances. So they were a</p> <p>15 security, and we provided exemptive relief to</p> <p>16 companies that were trying to do an ICO.</p> <p>17 Q. And in those cases, were they</p> <p>18 required to register?</p> <p>19 A. We provided a registration</p> <p>20 exemption for a period of time, for them to</p> <p>21 capital raise, provided they complied with</p> <p>22 conditions of the decision.</p> <p>23 Q. And to your knowledge, has</p> <p>24 LaunchPad provided any guidance to a company about</p> <p>25 how to conduct an ICO in a way that the token</p> |

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| <p>1 involved would not be treated as a security?</p> <p>2 A. No. That's not our role.</p> <p>3 Q. And as you indicated, prior to</p> <p>4 this release, the OSC had not provided any public</p> <p>5 releases regarding distributed ledger</p> <p>6 technologies, is that right?</p> <p>7 A. I don't believe so.</p> <p>8 Q. And you don't consider this to be</p> <p>9 guidance, do you?</p> <p>10 A. This was a media release intended</p> <p>11 to communicate our position that securities</p> <p>12 regulation may apply to anything from initial coin</p> <p>13 offerings, crypto asset-type funds, or trading</p> <p>14 platforms that could be a marketplace. We were</p> <p>15 just raising awareness that prospectus</p> <p>16 registration and, I believe, marketplace</p> <p>17 requirements could apply.</p> <p>18 Q. I want to now turn to the</p> <p>19 discussions with Kik. When did you first become</p> <p>20 aware of Kik as a business?</p> <p>21 A. It would have been in July of</p> <p>22 2017.</p> <p>23 Q. But, prior to that you had not</p> <p>24 been aware of its messaging service?</p> <p>25 A. No.</p> | <p>1 --- upon resuming at 10:25 a.m.</p> <p>2</p> <p>3 PAT CHAUKOS, resumed</p> <p>4 CONTINUED EXAMINATION BY MR. CADIGAN:</p> <p>5</p> <p>6 --- EXHIBIT NO. 110: E-mail from Ross McKee to Pat</p> <p>7 Chaukos, copied to Monica Kowal</p> <p>8 and Amy Tsai, dated July 25, 2017,</p> <p>9 Bates stamped SEC/OSCE 2071-2072</p> <p>10</p> <p>11 --- EXHIBIT NO. 111: Letter from Ross McKee to Pat</p> <p>12 Chaukos, Bates stamped KIK 115829-</p> <p>13 115834</p> <p>14</p> <p>15 BY MR. CADIGAN:</p> <p>16 Q. Ms. Chaukos, just before we went</p> <p>17 off the record we were about to talk about the</p> <p>18 letters you received from counsel for Kik on July</p> <p>19 25th, 2017. I am putting in front of you what has</p> <p>20 been marked exhibits 110 and 111. And for the</p> <p>21 record, Exhibit 110 is an e-mail from Ross McKee</p> <p>22 to you, copying Monica Kowal and Amy Tsai, dated</p> <p>23 July 25th, 2017 at 3:05 p.m., Bates stamped</p> <p>24 SEC/OSCE-2071 and 2072.</p> <p>25 A. I have 3:08.</p> |
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| <p>1 Q. And is that the same time you</p> <p>2 first became aware of its plan to offer or sell</p> <p>3 Kin tokens?</p> <p>4 A. I became aware of Kik through a</p> <p>5 media release, but I don't recall what was</p> <p>6 involved in the media release.</p> <p>7 Q. You say you don't recall the</p> <p>8 nature of the media release?</p> <p>9 A. No.</p> <p>10 Q. When did you first become aware of</p> <p>11 Kik's plan to offer or sell Kin tokens?</p> <p>12 A. Through a letter provided by their</p> <p>13 counsel in July of 2017.</p> <p>14 MR. HARNISCH: I know we have come</p> <p>15 close to an hour, and since you are</p> <p>16 shifting...I should have said that a</p> <p>17 question or two ago, but before you get</p> <p>18 into documents...</p> <p>19 MR. CADIGAN: Sure.</p> <p>20 MR. HARNISCH: ...do you think we can</p> <p>21 take a short break?</p> <p>22 MR. CADIGAN: Yes, that's fine.</p> <p>23</p> <p>24 --- upon recessing at 10:17 a.m.</p> <p>25 --- A BRIEF RECESS</p> | <p>1 MS. CHISHOLM: You said 3:05 p.m.</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. Yes, I'm sorry. Actually, you're</p> <p>5 right, 3:08 p.m. Is that right? Thank you. For</p> <p>6 clarification. And Exhibit 111 is a July 25th,</p> <p>7 2017 letter to you from Ross McKee, Bates stamped</p> <p>8 KIK-115829 through 115834.</p> <p>9 So turning first to Exhibit 110, this is</p> <p>10 a copy of the e-mail you received from Ross McKee,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. At the time you received this e-</p> <p>14 mail, did you know who Ross McKee was?</p> <p>15 A. Yes.</p> <p>16 Q. How did you know Ross McKee?</p> <p>17 A. He's been involved in many matters</p> <p>18 at the OSC.</p> <p>19 Q. And copied on this is Monica Kowal</p> <p>20 and Amy Tsai. Who are they?</p> <p>21 A. Monica Kowal was, I believe, vice-</p> <p>22 chair at the time at the OSC. She was a previous</p> <p>23 colleague of Ross McKee. And Amy Tsai was on my</p> <p>24 core LaunchPad team. She was Fintech regulatory</p> <p>25 advisor.</p> |

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| <p>1 Q. What was Amy Tsai's role?</p> <p>2 A. Fintech regulatory advisor.</p> <p>3 Q. I'm sorry. But what does that</p> <p>4 entail?</p> <p>5 A. She's effectively legal counsel on</p> <p>6 many of these...in terms of part of the team,</p> <p>7 she's legal counsel on the team, and she would</p> <p>8 provide direct support, as well, to the</p> <p>9 businesses. So she's part of the core team, as I</p> <p>10 mentioned earlier.</p> <p>11 Q. Okay. And Monica Kowal is vice-</p> <p>12 chair of what group?</p> <p>13 A. Of the OSC.</p> <p>14 Q. This was received at around 3:00</p> <p>15 p.m., is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Do you happen to recall</p> <p>18 that the SEC published its DAO report later the</p> <p>19 same day?</p> <p>20 A. I would not have been aware of</p> <p>21 that at that time. I was on vacation.</p> <p>22 Q. So you were not in when this e-</p> <p>23 mail came in, right?</p> <p>24 A. No.</p> <p>25 Q. But, you did review this e-mail</p> | <p>1 Q. Is there a core team at the time</p> <p>2 that you would have discussed such matters with?</p> <p>3 A. Amy who is copied on the e-mail.</p> <p>4 Q. But, you don't recall who else you</p> <p>5 would have discussed this with?</p> <p>6 A. No.</p> <p>7 Q. Eventually, you spoke to Ross</p> <p>8 McKee by phone in response to his letter, isn't</p> <p>9 that right?</p> <p>10 A. I don't recall a phone call.</p> <p>11 Q. You don't recall a phone call with</p> <p>12 Ross McKee between July 31st and August 2nd?</p> <p>13 A. I don't recall a phone call at</p> <p>14 that time, no.</p> <p>15 Q. Well, at some point you said you</p> <p>16 invited Kik to come in and talk, right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. How did you convey that</p> <p>19 request?</p> <p>20 A. Through e-mail.</p> <p>21 Q. So you don't recall any</p> <p>22 discussions with him between July 31st and August</p> <p>23 2nd?</p> <p>24 A. No.</p> <p>25 Q. You don't recall describing Kik's</p> |
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| <p>1 when you returned from your vacation?</p> <p>2 A. I did.</p> <p>3 Q. And attached to the e-mail was the</p> <p>4 letter that's at Exhibit 111, is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And did you read this when you</p> <p>7 returned from your vacation?</p> <p>8 A. I did.</p> <p>9 Q. And what did you do in response to</p> <p>10 this letter?</p> <p>11 A. I asked to meet with Kik.</p> <p>12 Q. Did you have any internal</p> <p>13 discussions about the Kin offering after receiving</p> <p>14 the letter?</p> <p>15 MR. HARNISCH: Just say "Yes" or</p> <p>16 "No".</p> <p>17 THE WITNESS: Yes.</p> <p>18</p> <p>19 BY MR. CADIGAN:</p> <p>20 Q. Okay. With whom?</p> <p>21 A. With my team.</p> <p>22 Q. And when you say with your team,</p> <p>23 who was on that team?</p> <p>24 A. I don't recall exactly who I would</p> <p>25 have discussed it with.</p> | <p>1 letter to him as "refreshing"? Do you recall</p> <p>2 anything along those lines at any time?</p> <p>3 A. No.</p> <p>4 Q. Do you recall telling him that you</p> <p>5 were consulting internally on the letter?</p> <p>6 A. I don't recall that, no.</p> <p>7 Q. But you were, in fact, consulting</p> <p>8 internally on the letter, right?</p> <p>9 A. Well, normally when I get a letter</p> <p>10 and I have asked to meet with them, I would have</p> <p>11 looked at the letter and consulted with my team,</p> <p>12 yes. Normal practice.</p> <p>13 Q. But, do you recall doing that in</p> <p>14 this case?</p> <p>15 A. I don't recall it, but I imagine</p> <p>16 that I did.</p> <p>17 Q. Okay. Do you recall telling him</p> <p>18 that you were not inclined to give a preliminary</p> <p>19 indication of acceptance until you had a chance to</p> <p>20 consult internally?</p> <p>21 A. I do not recall that.</p> <p>22 Q. And so, you also don't recall</p> <p>23 telling him that OSC was considering publishing</p> <p>24 additional notice around the types of factors to</p> <p>25 consider for blockchain offerings?</p> |

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| <p>1 A. We would have done that at the</p> <p>2 August 4th meeting, yes.</p> <p>3 Q. Okay. But, you don't recall doing</p> <p>4 that prior to the August 14th meeting?</p> <p>5 A. No.</p> <p>6 Q. And to the extent that you</p> <p>7 discussed it during the August 14th meeting, that</p> <p>8 was a reference to the August 25th CSA notice that</p> <p>9 later came out, is that right?</p> <p>10 A. I don't think it was August 25th,</p> <p>11 I think it was August 24th.</p> <p>12 Q. Okay. August 24th.</p> <p>13 A. But yes, that CSA notice.</p> <p>14 Q. Do you recall Mr. McKee telling</p> <p>15 you verbally that Kin was hoping to get a</p> <p>16 preliminary indication ASAP?</p> <p>17 A. I recall that he said that in an</p> <p>18 e-mail.</p> <p>19 Q. But, you don't recall that in a</p> <p>20 verbal conversation?</p> <p>21 MR. HARNISCH: You need to give a</p> <p>22 verbal answer.</p> <p>23 THE WITNESS: No.</p> <p>24</p> <p>25 BY MR. CADIGAN:</p> | <p>1 exhibit which has been marked Exhibit 112, and</p> <p>2 it's Bates stamped SEC/OSCE-2097 through 2100.</p> <p>3 This is an e-mail to you from Ross McKee dated...I</p> <p>4 mean, it's a chain, the last of which is dated</p> <p>5 August 3rd, 2017, is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. In the e-mail, if you go to</p> <p>8 the second page of the document in the e-mail</p> <p>9 chain, Mr. McKee stated:</p> <p>10 "...I got your message, thanks, and I</p> <p>11 understand how it works..."</p> <p>12 Is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Next, it goes on to say in the</p> <p>15 next paragraph:</p> <p>16 "...It would be desirable to have</p> <p>17 confirmation, even verbal informal, that</p> <p>18 we are okay, we are on the right track</p> <p>19 before then..."</p> <p>20 Is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And then he went on to say:</p> <p>23 "...On the other hand, if regulatory</p> <p>24 indications are unfavourable, Kik would</p> <p>25 proceed on the token distribution solely</p> |
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| <p>1 Q. Do you recall discussing the DAO</p> <p>2 report with Mr. McKee verbally?</p> <p>3 A. Prior to August 14th?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. And you don't recall him</p> <p>7 discussing with you Kin's relevant utility in</p> <p>8 light of that, is that right?</p> <p>9 A. No. I don't recall a discussion</p> <p>10 at all.</p> <p>11 Q. You met with Kik on August 14th,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And indeed, on or about August</p> <p>15 3rd, you contacted Mr. McKee by e-mail, is that</p> <p>16 right?</p> <p>17 A. That sounds correct. Correct.</p> <p>18 MR. CADIGAN: Can I have the next</p> <p>19 exhibit marked?</p> <p>20</p> <p>21 --- EXHIBIT NO. 112: E-mail from Ross McKee to Pat</p> <p>22 Chaukos, dated August 3, 2017</p> <p>23</p> <p>24 BY MR. CADIGAN:</p> <p>25 Q. Okay. I am handing you the next</p> | <p>1 outside Canada, to exclude Canadian token</p> <p>2 purchasers pursuant to interpretation</p> <p>3 note 1..."</p> <p>4 Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And you responded and asked him if</p> <p>7 it would be possible for Kik to come in for a</p> <p>8 meeting before August 14th?</p> <p>9 A. Yes.</p> <p>10 Q. And you said you have questions</p> <p>11 about the tokens and their future utility, right?</p> <p>12 A. Yes.</p> <p>13 Q. And the meeting, in fact, take</p> <p>14 place on October 14th, correct?</p> <p>15 A. August 14th.</p> <p>16 Q. August 14th.</p> <p>17 A. Yes.</p> <p>18 Q. And prior to this meeting, did you</p> <p>19 have any discussions or communications with the</p> <p>20 SEC about Kik?</p> <p>21 A. No.</p> <p>22 Q. And internally, what steps did you</p> <p>23 take to review Kik's proposal?</p> <p>24 MR. HARNISCH: Objection. And I'm</p> <p>25 going to instruct Pat not to discuss any</p> |

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| <p style="text-align: right;">Page 59</p> <p>1 internal discussions with the OSC.</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. At the meeting on August 14th...on</p> <p>5 what basis?</p> <p>6 MR. HARNISCH: On any number of</p> <p>7 bases, not the least of which the</p> <p>8 workings of the OSC and their</p> <p>9 deliberations. And work on particular</p> <p>10 matters similar to the OSC are non-public</p> <p>11 and confidential.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. And other than the letter from Mr.</p> <p>15 McKee, at the meeting on August 14th, what other</p> <p>16 information did you have about Kin at that time?</p> <p>17 A. In the meeting?</p> <p>18 Q. Prior to the meeting. Yes.</p> <p>19 A. Prior to the meeting. No other</p> <p>20 information other than the letter.</p> <p>21 Q. Who attended the meeting?</p> <p>22 A. I recall Ted Livingston being</p> <p>23 there, Ross McKee being there. I believe there</p> <p>24 were a couple other Kik representatives, and there</p> <p>25 were two Cooley LLP lawyers on a conference call,</p> | <p style="text-align: right;">Page 61</p> <p>1 Timothy Baikie...</p> <p>2 A. Timothy Baikie was not at that</p> <p>3 meeting.</p> <p>4 Q. No?</p> <p>5 A. He was sick that day.</p> <p>6 Q. Okay. Who is Timothy Baikie?</p> <p>7 A. He's someone on the LaunchPad</p> <p>8 extended team from the market regulation branch.</p> <p>9 Q. But, the others that are listed</p> <p>10 here, namely, yourself, Amy Tsai, Neeta Varma and</p> <p>11 Jonathan Yeung were there?</p> <p>12 A. Yes.</p> <p>13 Q. And you have already discussed Amy</p> <p>14 Tsai's role. What about Neeta Varma, what was her</p> <p>15 role?</p> <p>16 A. Neeta Varma, at that time, was in</p> <p>17 the corporate finance branch, so she would have</p> <p>18 been our corporate finance person at the meeting.</p> <p>19 And Jonathan Yeung, at that time, was in</p> <p>20 compliance and registrant regulation, so he would</p> <p>21 have been in registration at that time.</p> <p>22 Q. I mean, in addition to being</p> <p>23 corporate finance and registration, were they also</p> <p>24 members of the LaunchPad team?</p> <p>25 A. The extended team.</p> |
| <p style="text-align: right;">Page 60</p> <p>1 Nancy Wojtas and I don't recall the other lawyer's</p> <p>2 name.</p> <p>3 Q. Was that Karen Ubell?</p> <p>4 A. I remember Karen, so that's</p> <p>5 probably right.</p> <p>6 Q. Okay. In addition, Peter Heinke</p> <p>7 and Tanner Philp were there. Do you...</p> <p>8 A. I don't recall their names.</p> <p>9 MR. CADIGAN: And the next exhibit</p> <p>10 marked is Exhibit 113.</p> <p>11</p> <p>12 --- EXHIBIT NO. 113: E-mail from Amanda Barone to Ross</p> <p>13 McKee and others, dated August 14,</p> <p>14 2017, Bates stamped KIK 86618-</p> <p>15 86621</p> <p>16</p> <p>17 BY MR. CADIGAN:</p> <p>18 Q. I'm handing what has been marked</p> <p>19 as Exhibit 113. For the record, it's an e-mail</p> <p>20 from Amanda Barone to Ross McKee and others, dated</p> <p>21 Monday, August 14th, 2017, Bates stamped KIK 86618</p> <p>22 through 86621. And I note that you are not on the</p> <p>23 last in time e-mail setting this up. And it</p> <p>24 mentions that the OSC attendees will include Pat</p> <p>25 Chaukos, Amy Tsai, Neeta Varma, Jonathan Yeung,</p> | <p style="text-align: right;">Page 62</p> <p>1 Q. Do you recall how long the meeting</p> <p>2 lasted?</p> <p>3 A. Typically, they are an hour, but I</p> <p>4 feel like that one went over a bit, so an hour to</p> <p>5 an hour-and-a-half.</p> <p>6 Q. Did you, or anyone else at the OSC</p> <p>7 take notes of that meeting?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Who took notes at that</p> <p>10 meeting?</p> <p>11 A. Our normal practice is to take</p> <p>12 notes during these meetings, so I assume anyone</p> <p>13 who attended.</p> <p>14 Q. Did you take notes at the meeting?</p> <p>15 A. I did.</p> <p>16 Q. Did you review those notes in</p> <p>17 preparation for your deposition today?</p> <p>18 A. In preparation? I have reviewed</p> <p>19 them in the last month, but not in preparation.</p> <p>20 Q. What materially did you</p> <p>21 read...what did you do to prepare for the meeting</p> <p>22 with Kik?</p> <p>23 A. Me, personally?</p> <p>24 Q. Yes.</p> <p>25 A. I would have reviewed the Ross</p> |

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| <p>1 McKee letter, and I would rely on my team to give</p> <p>2 me, kind of, the background in terms of Kik</p> <p>3 itself. And at the time, there was a white paper,</p> <p>4 as well.</p> <p>5 Q. Were there any memos, or written</p> <p>6 materials prepared analyzing whether or not Kik's</p> <p>7 tokens would be securities?</p> <p>8 A. At that time?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. Had you had discussions along</p> <p>12 those lines?</p> <p>13 A. Yes.</p> <p>14 Q. And would those discussions have</p> <p>15 been with the members that were present at the</p> <p>16 meeting for the OSC?</p> <p>17 A. Yes.</p> <p>18 Q. At the meeting, do you recall</p> <p>19 telling Kik, or its counsel, that you had not</p> <p>20 finished reviewing all the material that Kik had</p> <p>21 submitted?</p> <p>22 A. The only thing that I would not</p> <p>23 have reviewed in its entirety is the white paper,</p> <p>24 if you're asking about me personally. My team</p> <p>25 would have read it though.</p> | <p>1 was conveyed at the meeting. As I said</p> <p>2 before, she's not going to talk about</p> <p>3 internal discussions that were internal</p> <p>4 to the OSC.</p> <p>5 MR. CADIGAN: And then, that</p> <p>6 instruction is based on what? And we can</p> <p>7 get...I mean, I'm happy to short-phrase</p> <p>8 it, but I just want to make sure I</p> <p>9 understand. You are saying that the</p> <p>10 internal deliberations of the OSC are</p> <p>11 privileged? Is that your...</p> <p>12 MR. HARNISCH: Non-public,</p> <p>13 confidential, depending on the nature may</p> <p>14 also be privileged. And, as part of our</p> <p>15 voluntary appearance today, is not going</p> <p>16 to be talking about internal confidential</p> <p>17 non-public information within the OSC,</p> <p>18 period.</p> <p>19 MR. CADIGAN: And I mean, if we were</p> <p>20 to designate this as confidential under</p> <p>21 the existing protective order in this</p> <p>22 matter, I take it, you would still</p> <p>23 instruct her not to answer?</p> <p>24 MR. HARNISCH: Starting with, I</p> <p>25 haven't seen your protective order, but</p> |
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| <p>1 Q. But, did you tell Kik, or its</p> <p>2 counsel, at the meeting that you had not completed</p> <p>3 your review of that material yet?</p> <p>4 A. If I made that statement it would</p> <p>5 be in terms of the review of coming to a</p> <p>6 conclusion.</p> <p>7 Q. Prior to the meeting, had the OSC</p> <p>8 come to a determination as to whether the proposed</p> <p>9 sale of Kin constituted an offering of securities</p> <p>10 under Canadian law?</p> <p>11 MR. HARNISCH: Objection, and I'm</p> <p>12 going to instruct Pat not to answer that</p> <p>13 question for similar reasons I have given</p> <p>14 before, that she's not going to be</p> <p>15 talking about internal discussions at the</p> <p>16 OSC that have not been publicly</p> <p>17 pronounced.</p> <p>18</p> <p>19 BY MR. CADIGAN:</p> <p>20 Q. And just for the record, there are</p> <p>21 communications in here regarding whether or not</p> <p>22 the OSC conveyed a determination at that meeting,</p> <p>23 and I am wondering whether or not actually the OSC</p> <p>24 had come to a determination prior to that meeting?</p> <p>25 MR. HARNISCH: You can ask her what</p> | <p>1 more generally speaking, that does not</p> <p>2 allay the concerns that the OSC has about</p> <p>3 disclosing confidential, non-public</p> <p>4 information, irrespective of whatever</p> <p>5 protective order may be in place.</p> <p>6 MR. CADIGAN: And so, you are</p> <p>7 instructing her not to answer?</p> <p>8 MR. HARNISCH: In case that wasn't</p> <p>9 clear, yes.</p> <p>10</p> <p>11 BY MR. CADIGAN:</p> <p>12 Q. And prior to the meeting, in</p> <p>13 assessing Kik's proposed sale of Kin and whether</p> <p>14 it constituted an offering of securities, what</p> <p>15 law, if any, did the OSC look to?</p> <p>16 MR. HARNISCH: I don't understand the</p> <p>17 question, so don't...can you rephrase</p> <p>18 that?</p> <p>19 MR. CADIGAN: Yes. Right. And I am</p> <p>20 assuming we are going to get instruction</p> <p>21 not to answer, but...</p> <p>22 MR. HARNISCH: But, in fairness, I</p> <p>23 want to make sure I understand...</p> <p>24 MR. CADIGAN: Yes.</p> <p>25 MR. HARNISCH: ...what you're asking.</p> |

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| <p style="text-align: right;">Page 67</p> <p>1</p> <p>2 BY MR. CADIGAN:</p> <p>3 Q. Prior to the meeting, in assessing</p> <p>4 whether the proposed sale of Kin constituted an</p> <p>5 offering of securities, what law, if any, did the</p> <p>6 OSC look to?</p> <p>7 MR. HARNISCH: For similar reasons, I</p> <p>8 am going to instruct Pat not to answer.</p> <p>9 If you want to, you know, perhaps, focus</p> <p>10 the questioning on what was discussed at</p> <p>11 the meeting and perhaps probe rationale</p> <p>12 for what was said and why, you know, we</p> <p>13 may get to a different place. Just</p> <p>14 trying to help.</p> <p>15 MR. CADIGAN: Yes, appreciate that.</p> <p>16 And actually, I am trying to get at that,</p> <p>17 as well...</p> <p>18 MR. HARNISCH: Okay.</p> <p>19 MR. CADIGAN: ...to get the rationale</p> <p>20 for what was discussed, happened prior to</p> <p>21 the meeting.</p> <p>22</p> <p>23 BY MR. CADIGAN:</p> <p>24 Q. But, let's turn to the meeting.</p> <p>25 What do you recall about the meeting, in as much</p> | <p style="text-align: right;">Page 69</p> <p>1 guidance on many of the points that were raised in</p> <p>2 that meeting.</p> <p>3 Q. And...</p> <p>4 A. And I am going to add one other</p> <p>5 thing. They had two offerings, they had the SAFT</p> <p>6 and the public launch. The SAFT, they had</p> <p>7 concluded that that was a security, so the focus</p> <p>8 of the discussion was on the public launch, or</p> <p>9 what they called the token distribution event.</p> <p>10 Q. Okay. And again, you indicated</p> <p>11 that you have reviewed your notes of that meeting</p> <p>12 prior to today's testimony, right?</p> <p>13 MR. HARNISCH: In fairness, she said</p> <p>14 about a month ago, but not for purposes</p> <p>15 of preparing for the deposition.</p> <p>16 THE WITNESS: Yes.</p> <p>17</p> <p>18 BY MR. CADIGAN:</p> <p>19 Q. Yes, okay. And in doing so, is</p> <p>20 anything that you described here not reflected in</p> <p>21 your notes?</p> <p>22 A. Anything I have described here not</p> <p>23 reflected in the notes? I have very sparse notes.</p> <p>24 I typically only take notes of things that</p> <p>25 are...that I would not remember, or that I am...or</p> |
| <p style="text-align: right;">Page 68</p> <p>1 detail as you can provide?</p> <p>2 A. I recall that we would have had</p> <p>3 questions about the tokens themselves, and</p> <p>4 whether...because a number of firms would argue</p> <p>5 that their tokens are utility tokens, so we would</p> <p>6 have discussed that. I recall that...</p> <p>7 Q. And I apologize, but I'm not...I</p> <p>8 just want to be clear what you actually recall</p> <p>9 versus what...when you say you would have, I want</p> <p>10 to make sure that we are differentiating what you</p> <p>11 actually recall from what you believe you may have</p> <p>12 discussed.</p> <p>13 A. No. We talked about the utility</p> <p>14 of the tokens.</p> <p>15 Q. Okay. Thank you.</p> <p>16 A. Okay? We discussed why Ross McKee</p> <p>17 and legal counsel took the position that it was</p> <p>18 not a security. We brought up factors that we</p> <p>19 thought indicated that it was a security and not</p> <p>20 different than a capital raise by a business to</p> <p>21 develop a future platform. I believe someone,</p> <p>22 whether it was Cooley or Ross McKee, brought up</p> <p>23 the DAO report and tried to distinguish that. And</p> <p>24 I would have communicated that we are close to</p> <p>25 publishing a notice that would provide a lot more</p> | <p style="text-align: right;">Page 70</p> <p>1 next steps, like in terms of at the conclusion of</p> <p>2 the meeting, or anything unusual.</p> <p>3 Q. So a lot of what you described</p> <p>4 here was not reflected in your notes?</p> <p>5 MR. HARNISCH: If you can remember.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7</p> <p>8 BY MR. CADIGAN:</p> <p>9 Q. You don't recall what?</p> <p>10 A. I don't recall if everything that</p> <p>11 I...I know what we discussed. Whether it's all</p> <p>12 reflected in my notes, I don't recall.</p> <p>13 Q. Prior to today's testimony in</p> <p>14 preparation for this testimony, did you check to</p> <p>15 see if others had notes of the meeting that you</p> <p>16 could look at?</p> <p>17 A. No. You mean for purposes of the</p> <p>18 prep today?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. What steps did you take to refresh</p> <p>22 your memory on what was said at that meeting?</p> <p>23 A. E-mails, documents. It was over</p> <p>24 two years ago. Those are the primary sources I</p> <p>25 looked to.</p> |

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| <p>1 Q. And even though you had notes of</p> <p>2 that meeting, you didn't look at those notes to</p> <p>3 prepare yourself for today's deposition?</p> <p>4 A. I looked at them a month ago.</p> <p>5 Q. But, you said that you didn't look</p> <p>6 at them to prepare for today's deposition.</p> <p>7 A. There was nothing in my notes that</p> <p>8 was surprising to me.</p> <p>9 Q. Well, what was in your notes?</p> <p>10 A. There were...there was something</p> <p>11 about the percentages, because I won't remember</p> <p>12 percentages in terms of how much was the public</p> <p>13 launch versus what is being held by the Kin</p> <p>14 Foundation and miners. I would have, obviously,</p> <p>15 had something around the public launch, and I</p> <p>16 recall that there were next steps.</p> <p>17 Q. Do you recall that at the outset</p> <p>18 there was an introduction by Ross McKee?</p> <p>19 A. I don't recall exactly what was</p> <p>20 said, but I do recall that he did start the</p> <p>21 meeting off.</p> <p>22 Q. But, you don't recall what he</p> <p>23 said?</p> <p>24 A. No.</p> <p>25 Q. Do you recall that then Ted</p> | <p>1 A. Specifically after Ross McKee, no.</p> <p>2 Q. Do you recall anything that Mr.</p> <p>3 Livingston said?</p> <p>4 A. I recall that Mr. Livingston did</p> <p>5 not like the idea that if this was subject to</p> <p>6 securities law, that he wouldn't be allowed to do</p> <p>7 secondary trading of the Kin tokens.</p> <p>8 Q. And what did he say to convey</p> <p>9 that?</p> <p>10 A. He conveyed that directly, that</p> <p>11 he...that basically...I don't remember if he used</p> <p>12 the word "non-starter" or "this is not acceptable</p> <p>13 to us" but he did not like the idea that if we</p> <p>14 went the route of prospectus relief, which means</p> <p>15 you can't do resale or secondary trading, he did</p> <p>16 not like the idea that Kin tokens could not be</p> <p>17 sold in a secondary market, or secondary trading</p> <p>18 of the Kin tokens.</p> <p>19 Q. Do you recall anything else about</p> <p>20 what Mr. Livingston said at the meeting?</p> <p>21 A. No.</p> <p>22 Q. Okay. And you indicated that</p> <p>23 during the meeting Kik discussed the reasons that</p> <p>24 it believed that it was not a security?</p> <p>25 A. Yes.</p> |
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| <p>1 Livingston spoke, the CEO of Kik?</p> <p>2 A. I don't recall what Ted...what I</p> <p>3 recall from Ted Livingston is not the</p> <p>4 introduction.</p> <p>5 Q. But, do you recall Ted Livingston</p> <p>6 then speaking about Kik?</p> <p>7 A. Most likely he may have, yes.</p> <p>8 Q. But, do you recall him doing so?</p> <p>9 A. No.</p> <p>10 MR. HARNISCH: I'm sorry. Are you</p> <p>11 talking about Mr. Livingston saying</p> <p>12 something after Ross' introduction...</p> <p>13 MR. CADIGAN: Yes.</p> <p>14 MR. HARNISCH: ...or whether he</p> <p>15 said...okay. So not just whether he said</p> <p>16 anything at the meeting, but</p> <p>17 specifically...</p> <p>18 MR. CADIGAN: Right. Whether he then</p> <p>19 spoke after Ross McKee.</p> <p>20 MR. HARNISCH: Okay.</p> <p>21 THE WITNESS: Yes.</p> <p>22</p> <p>23 BY MR. CADIGAN:</p> <p>24 Q. You don't recall him speaking</p> <p>25 after Ross McKee?</p> | <p>1 Q. Do you recall what exactly it said</p> <p>2 in that regard, or to the best of your</p> <p>3 recollection, what did Kik say in that regard?</p> <p>4 A. To the best of my recollection,</p> <p>5 they were taking the position that the Kin tokens</p> <p>6 were a cryptocurrency and not a security.</p> <p>7 Q. Do you recall anything else?</p> <p>8 A. That was the general theme</p> <p>9 throughout the meeting.</p> <p>10 Q. And then, you said that you</p> <p>11 brought up factors that cut against that analysis,</p> <p>12 is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And again, focusing solely</p> <p>15 on the meeting, what factors did you describe?</p> <p>16 A. I would have described the fact</p> <p>17 that the platform had not been developed, that</p> <p>18 they were capital raising in order to develop</p> <p>19 their Kin token platform. And I imagine we</p> <p>20 probably got into the prongs of the tests. I know</p> <p>21 that Cooley was focused on the prongs of the Howey</p> <p>22 Test. And in Canada we have a precedent that</p> <p>23 broadens Howey, which is Pacific Coast Coin.</p> <p>24 Q. And when you brought up the</p> <p>25 factors that you said cut against the suggestion</p> |

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| <p>1 that it was not a security, what was the response</p> <p>2 from the Kik team?</p> <p>3 A. Generally, their responses were</p> <p>4 they didn't agree with our position.</p> <p>5 Q. But, did they provide any basis</p> <p>6 for why they didn't agree with your position?</p> <p>7 A. They tried to find what I would</p> <p>8 call technical arguments. So, for example,</p> <p>9 because there was no profit sharing, that was</p> <p>10 distinguishing it from DAO, or from other case</p> <p>11 law, or the fact that it's a decentralized</p> <p>12 technology, you're not relying on solely or</p> <p>13 primarily from the efforts of the management,</p> <p>14 and we would bring up factors as to why we</p> <p>15 disagreed with that.</p> <p>16 Q. And what were the factors you</p> <p>17 brought up? Let's start with the fact that it was</p> <p>18 not profit sharing?</p> <p>19 A. So that goes to the expectation of</p> <p>20 profit. So in terms of a lot of the</p> <p>21 communications we had seen by the Kik team, as</p> <p>22 well as how the token value would go up, would</p> <p>23 show that there is an expectation of profit. The</p> <p>24 fact that the trading platform was...didn't matter</p> <p>25 that it was on a blockchain, or distributed ledger</p> | <p>1 guidance that was going to be published the</p> <p>2 following week. So all of those factors are</p> <p>3 factors we have heard from Kik and others and that</p> <p>4 we haven't accepted as reasons to say that it's</p> <p>5 not a security.</p> <p>6 Q. And had you had a prior internal</p> <p>7 meeting to discuss what you were going to convey</p> <p>8 to Kik at the meeting?</p> <p>9 MR. HARNISCH: Just say "Yes" or "No"</p> <p>10 or you don't remember.</p> <p>11 THE WITNESS: I don't remember.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. And during the meeting, was there</p> <p>15 any discussion as to whether Canadian securities</p> <p>16 law would apply?</p> <p>17 A. Could you repeat the question?</p> <p>18 Q. Yes. Actually, let me step back.</p> <p>19 During the meeting was there any discussion about</p> <p>20 U.S. securities laws?</p> <p>21 A. Yes, there was, by Cooley.</p> <p>22 Q. And it's your position that the</p> <p>23 governing standard would have been Pacific Coin</p> <p>24 Exchange, is that right?</p> <p>25 A. In Canada, yes.</p> |
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| <p>1 technology. At the end of the day they were</p> <p>2 relying on the Kik management team to build that</p> <p>3 platform. Investors would be relying on the Kik</p> <p>4 management team to build that platform.</p> <p>5 Q. And this is something you said to</p> <p>6 them at the meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Is that reflected in your notes?</p> <p>9 A. No.</p> <p>10 Q. Regarding the point that it was</p> <p>11 decentralized, what did you say in response to</p> <p>12 that, if anything?</p> <p>13 A. They were pointing to that to say</p> <p>14 that it had nothing to do with the Kik team</p> <p>15 developing, so that you are not relying on the</p> <p>16 efforts of the Kik team. And at the end of the</p> <p>17 day, investors that are investing in this are</p> <p>18 looking to Kik to build this platform.</p> <p>19 Q. To come to the conclusions that</p> <p>20 you conveyed in that meeting, how did you arrive</p> <p>21 at those conclusions?</p> <p>22 A. We had worked with a number of</p> <p>23 businesses that were taking somewhat similar</p> <p>24 positions. We had done the media release in</p> <p>25 March, and we had finished putting together the</p> | <p>1 Q. During the meeting, did you</p> <p>2 express the opinion in sum or substance that the</p> <p>3 Howey framework was an old framework?</p> <p>4 A. No.</p> <p>5 Q. You never said that?</p> <p>6 A. No. What I said is that they were</p> <p>7 taking technical arguments and trying to say that</p> <p>8 it doesn't apply to the Kin token. And when you</p> <p>9 look at investment contract analysis, you have to</p> <p>10 look at the facts and circumstances of what you</p> <p>11 have in front of you. And the way they were</p> <p>12 applying it was they were trying to take a</p> <p>13 technical interpretation and apply it to the Kin</p> <p>14 token.</p> <p>15 Q. But, you say that the fact that</p> <p>16 they weren't profit sharing was a technical</p> <p>17 argument, is that right?</p> <p>18 A. That's the argument they made.</p> <p>19 Q. Yes. And you...</p> <p>20 A. That's how they distinguished DAO.</p> <p>21 Q. Yes. And I think you described</p> <p>22 that as a technical argument.</p> <p>23 A. I said that you can't just look at</p> <p>24 it. Just because there's no profit sharing, that</p> <p>25 it's not an investment contract. You have to look</p> |

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| <p>1 at expectation of profit, and what does that mean.</p> <p>2 Q. You made reference though to</p> <p>3 technical arguments. Is that a technical</p> <p>4 argument, as you are describing it?</p> <p>5 A. What I would call that is</p> <p>6 distinctions without a difference.</p> <p>7 Q. Okay. But, I'm trying...</p> <p>8 A. They were making distinctions, but</p> <p>9 underlying when you look at the test and if you</p> <p>10 take a purposive interpretation, I don't agree</p> <p>11 with it, that you can't just say just because</p> <p>12 there's no profit sharing, it's not an investment</p> <p>13 contract.</p> <p>14 Q. But, that's not a technical</p> <p>15 argument, is it?</p> <p>16 MR. HARNISCH: Objection. I think</p> <p>17 she's...</p> <p>18 THE DEPONENT: It's legal.</p> <p>19 MR. HARNISCH: Hang on. I think she</p> <p>20 has given you what she said and why she</p> <p>21 said it, right? We are quibbling about</p> <p>22 whether something is "technical" or not,</p> <p>23 or what you mean by...</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. HARNISCH: ...technical. I think</p> | <p>1 technical argument?</p> <p>2 MR. HARNISCH: That's...</p> <p>3 THE WITNESS: Again, it depends what</p> <p>4 you mean by...</p> <p>5 MR. HARNISCH: I think we are</p> <p>6 going...hang on, Pat. Hang on.</p> <p>7 MR. CADIGAN: I'm wondering...</p> <p>8 MR. HARNISCH: Hang on. I think we</p> <p>9 are going down a road that is not</p> <p>10 productive. You just asked her what she</p> <p>11 meant by technical argument. She gave</p> <p>12 you the answer as to what she meant.</p> <p>13 MR. CADIGAN: And I'm asking whether</p> <p>14 this is, and she's asking me what I</p> <p>15 think, and I just want to know whether</p> <p>16 she thinks that's a technical argument?</p> <p>17 I want it to be clarified.</p> <p>18 MR. HARNISCH: She just said and I</p> <p>19 mean, the record will speak for itself,</p> <p>20 but I believe she just said, here's an</p> <p>21 argument that Ross was making that</p> <p>22 because there was no profit sharing, that</p> <p>23 means it's not an investment contract.</p> <p>24 She was characterizing by saying</p> <p>25 "technical", right, that's what Ross was</p> |
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| <p>1 she said, here's what was said, here's</p> <p>2 the response, and the reason for the</p> <p>3 response, and why I think in her most</p> <p>4 recent statements, it may be a</p> <p>5 distinction without a difference. So I</p> <p>6 think it's been asked, and I think it's</p> <p>7 been answered.</p> <p>8 MR. CADIGAN: No.</p> <p>9 MR. HARNISCH: And if you want to</p> <p>10 explain what you mean by a "technical</p> <p>11 argument" and we will make sure we get a</p> <p>12 meeting on the minds, that's great.</p> <p>13</p> <p>14 BY MR. CADIGAN:</p> <p>15 Q. Okay. What did you mean by a</p> <p>16 technical argument?</p> <p>17 A. Technical, I find lawyers</p> <p>18 sometimes make technical legal arguments to</p> <p>19 somehow distinguish the case law. So he was</p> <p>20 making a technical argument. Because there was no</p> <p>21 profit sharing, it did not fit within the</p> <p>22 DAO...the...or whatever was released from the SEC</p> <p>23 on the DAO.</p> <p>24 Q. So it's your position that the</p> <p>25 fact that there was no profit sharing was a</p> | <p>1 saying, and why she disagreed, period.</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. What were the arguments that you</p> <p>5 understood to be technical arguments that you</p> <p>6 heard Kik to be making?</p> <p>7 MR. SCHLEGELMILCH: Objection.</p> <p>8 THE WITNESS: Technical arguments? I</p> <p>9 think I already covered those. The ones</p> <p>10 that I recall are the fact that they were</p> <p>11 distinguishing DAO because of profit</p> <p>12 sharing, and that because it was</p> <p>13 distributed ledger technology, you</p> <p>14 weren't relying on the efforts of others.</p> <p>15</p> <p>16 BY MR. CADIGAN:</p> <p>17 Q. In this discussion, it's your</p> <p>18 understanding, wasn't it at the time, that the DAO</p> <p>19 was not governing law in Canada, right?</p> <p>20 A. It's not governing law in Canada.</p> <p>21 Q. Was it your understanding that</p> <p>22 Howey was governing law in Canada?</p> <p>23 A. It depends what you mean</p> <p>24 "governing". Howey is, obviously, U.S. case law</p> <p>25 that we would look to, but Pacific Coin Coast is</p> |

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| <p>1 higher precedence in Canada.</p> <p>2 Q. I mean, you are not required</p> <p>3 though to follow Howey, right?</p> <p>4 MR. SCHLEGELMILCH: Objection.</p> <p>5 THE WITNESS: I don't know. I don't</p> <p>6 believe so. The Pacific Coin Coast case</p> <p>7 law depends on the prongs that are</p> <p>8 enumerated in Howey.</p> <p>9</p> <p>10 BY MR. CADIGAN:</p> <p>11 Q. And isn't it true that when the</p> <p>12 CSA provided its August 2017 release, it never</p> <p>13 mentions Howey in that guidance, right?</p> <p>14 A. No, I don't believe it does.</p> <p>15 Q. It mentions Pacific Coin Exchange</p> <p>16 and subsequent case law, is that right?</p> <p>17 A. We wouldn't enumerate every case</p> <p>18 law that we would look to.</p> <p>19 Q. As of the meeting, and you</p> <p>20 indicated that you did not express the opinion</p> <p>21 that the Howey framework was old...as of the</p> <p>22 meeting, did you hold the opinion that the Howey</p> <p>23 Test was an old framework?</p> <p>24 A. No.</p> <p>25 Q. During the meeting, did you</p> | <p>1 THE WITNESS: ...understand that</p> <p>2 question.</p> <p>3</p> <p>4 BY MR. CADIGAN:</p> <p>5 Q. You don't understand? I mean, as</p> <p>6 of the meeting...</p> <p>7 A. Right.</p> <p>8 Q. ...did you have an opinion as to</p> <p>9 whether the Howey framework was applicable to the</p> <p>10 determination as to whether the offering of Kin</p> <p>11 was an offering of securities?</p> <p>12 A. Howey Test sets out four prongs</p> <p>13 which are used in Pacific Coin Coast, so both</p> <p>14 cases which Pacific Coin Coast has precedential</p> <p>15 value in Canada, includes the four prongs of the</p> <p>16 Howey Test. So to say that they are separate and</p> <p>17 distinct is inaccurate.</p> <p>18 Q. Well, I'm asking you just whether</p> <p>19 you had an opinion? Either you had an opinion, or</p> <p>20 you didn't have an opinion. Did you have an</p> <p>21 opinion on that topic.</p> <p>22 A. No. The law is the law.</p> <p>23 Q. Now, you had gone into the meeting</p> <p>24 with the intention of listening to what Kik had to</p> <p>25 say, with an open mind, didn't you?</p> |
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| <p>1 express the opinion in sum or substance that you</p> <p>2 did not think that the Howey framework was</p> <p>3 applicable to the determination as to whether the</p> <p>4 offering of Kin was an offering of securities?</p> <p>5 A. I don't recall if I would have</p> <p>6 said something like that.</p> <p>7 Q. As of the meeting, did you hold</p> <p>8 the opinion that the Howey Test...</p> <p>9 A. The meeting...</p> <p>10 Q. ...was not applicable as a</p> <p>11 framework to determining whether or not the</p> <p>12 offering of Kin was an offering of security?</p> <p>13 A. The prongs of investment contract</p> <p>14 are set out in Howey. Pacific Coin Coast relies</p> <p>15 on those prongs and, in fact, broadens one of the</p> <p>16 prongs of the test. So Howey would have come up.</p> <p>17 It is relevant in that Pacific Coin Coast looked</p> <p>18 at the prongs of the Howey Test in its analysis.</p> <p>19 Q. Again, let me ask the question</p> <p>20 though. As of the meeting, did you hold the</p> <p>21 opinion that the Howey framework was not</p> <p>22 applicable to the determination as to whether the</p> <p>23 offering Kin was an offering of securities?</p> <p>24 A. I really don't...</p> <p>25 MR. SCHLEGELMILCH: Objection.</p> | <p>1 A. Yes.</p> <p>2 Q. And you still had materials and</p> <p>3 Kik's presentation to consider in terms of</p> <p>4 deciding whether or not that offering was an</p> <p>5 offering of securities, right?</p> <p>6 MR. HARNISCH: I'm sorry. Could you</p> <p>7 say that again?</p> <p>8 MR. CADIGAN: Yes.</p> <p>9 MR. HARNISCH: I'm not sure I</p> <p>10 understood part of the middle of that.</p> <p>11</p> <p>12 BY MR. CADIGAN:</p> <p>13 Q. Yes. You still had materials and</p> <p>14 Kik's presentation to consider in assessing</p> <p>15 whether or not the Kin offering was an offering of</p> <p>16 securities, right?</p> <p>17 A. I don't know if we had materials,</p> <p>18 and I don't recall a presentation. We had</p> <p>19 questions that needed...obviously, we needed to</p> <p>20 understand during that meeting.</p> <p>21 Q. I mean, you hadn't looked at all</p> <p>22 the materials related to the Kin offering at that</p> <p>23 point?</p> <p>24 A. I don't know what you mean by "all</p> <p>25 the materials".</p> |

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| <p>1 Q. Well, you hadn't looked, for</p> <p>2 example, at the...had you looked at the SAFT as of</p> <p>3 the meeting?</p> <p>4 A. Had I looked at the SAFT? What do</p> <p>5 you mean by...it was set out in the letter that</p> <p>6 Ross McKee sent to us, so I had looked at the</p> <p>7 letter.</p> <p>8 Q. Yes, but had you looked at the</p> <p>9 actual SAFT?</p> <p>10 A. No.</p> <p>11 Q. Okay. Had you looked at the terms</p> <p>12 of use and other agreements between token</p> <p>13 purchasers and the proposed public sale?</p> <p>14 A. I wouldn't have done that. My</p> <p>15 team may have done that.</p> <p>16 Q. Do you know whether they did?</p> <p>17 A. I don't know that.</p> <p>18 Q. I mean, were there other materials</p> <p>19 that you still wanted to look at with respect to</p> <p>20 the Kin offering as of the meeting?</p> <p>21 A. Me, personally?</p> <p>22 Q. Yes.</p> <p>23 A. No.</p> <p>24 Q. At the close of the meeting, you</p> <p>25 conveyed to Kik that you were still considering</p> | <p>1 A. Yes.</p> <p>2 Q. Okay. And you told them at that</p> <p>3 time that you considered this to be a decided</p> <p>4 issue?</p> <p>5 A. I didn't say it was decided. I</p> <p>6 said we believed that it is a security.</p> <p>7 Q. As of that time, had the OSC come</p> <p>8 to a decision as to whether or not the offering of</p> <p>9 Kin was an offering of securities?</p> <p>10 A. Can you repeat the question?</p> <p>11 Q. Yes. As of the meeting, had the</p> <p>12 OSC come to a decision as to whether the proposed</p> <p>13 offering of Kin was an offering of securities?</p> <p>14 A. Yes. That was the purpose of the</p> <p>15 meeting. If we agreed with Ross McKee that this</p> <p>16 was not a security, there was no purpose in having</p> <p>17 the meeting.</p> <p>18 Q. And you conveyed that expressly</p> <p>19 and verbally during the meeting?</p> <p>20 A. Yes. As part of next steps, we do</p> <p>21 that, and we say what are next steps. And I</p> <p>22 recall that the reaction was that:</p> <p>23 "...If this is a security, then we are</p> <p>24 going to do this. We are going to</p> <p>25 exclude Canadian purchasers..."</p> |
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| <p>1 the matter, isn't that right?</p> <p>2 A. I don't know what that would have</p> <p>3 been in response to. Me saying I would consider</p> <p>4 the matter?</p> <p>5 Q. You were still considering the</p> <p>6 matter.</p> <p>7 A. That we were still considering the</p> <p>8 matter?</p> <p>9 Q. Yes.</p> <p>10 A. I don't recall that.</p> <p>11 Q. Do you recall expressing</p> <p>12 definitively that the OSC's position was that the</p> <p>13 offering of Kin was a securities offering?</p> <p>14 A. I recall that we believed that the</p> <p>15 Kin offering was a security and that we would be</p> <p>16 open to prospectus and registration relief because</p> <p>17 we were working on a similar matter where we had</p> <p>18 given similar relief, and that I wanted them to</p> <p>19 think about investment limits and resale</p> <p>20 restrictions.</p> <p>21 Q. And you said all of that at the</p> <p>22 meeting?</p> <p>23 A. Yes, at the end of the meeting as</p> <p>24 part of next steps.</p> <p>25 Q. Was that reflected in your notes?</p> | <p>1 Q. They said that at the meeting?</p> <p>2 A. M'hmm.</p> <p>3 MR. HARNISCH: Is that a "Yes"?</p> <p>4 THE WITNESS: Yes. Sorry.</p> <p>5</p> <p>6 BY MR. CADIGAN:</p> <p>7 Q. Because you are being very</p> <p>8 definitive here in what you said...</p> <p>9 A. M'hmm.</p> <p>10 Q. ...did you ever express that in</p> <p>11 writing to Kik?</p> <p>12 A. That's not really our role. Our</p> <p>13 role with LaunchPad is to help companies navigate</p> <p>14 regulatory requirements. We did that in the</p> <p>15 meeting. We talked about next steps. That's what</p> <p>16 we do. We provide support.</p> <p>17 Q. So you did not provide that</p> <p>18 position in writing at any time?</p> <p>19 A. That's not our role. We don't</p> <p>20 give positions in writing to companies.</p> <p>21 Q. You did not provide that position</p> <p>22 in writing at any time, did you?</p> <p>23 A. I don't believe so.</p> <p>24 Q. And indeed, Ross McKee exchanged</p> <p>25 e-mails with you over the next several weeks,</p> |

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| <p>1 right?</p> <p>2 A. Next three weeks about, yes.</p> <p>3 Q. Okay. And in none of those e-</p> <p>4 mails did you ever tell him that the OSC had</p> <p>5 already taken the position that the offering of</p> <p>6 Kin was an offering of securities, right?</p> <p>7 A. Ross McKee is a very experienced</p> <p>8 lawyer, securities lawyer at that. So when I am</p> <p>9 talking about resale restrictions and onboarding</p> <p>10 and investor protections, he knows that we are</p> <p>11 taking the position that it's a security.</p> <p>12 Q. But, you did not ever expressly</p> <p>13 state in any of those e-mails that you had already</p> <p>14 told them that OSC had already decided that this</p> <p>15 was an offering of securities?</p> <p>16 A. We don't do that. I don't believe</p> <p>17 we would do that in an e-mail.</p> <p>18 Q. Did you tell Kik or its lawyers at</p> <p>19 the meeting, "I am not sure where you are at"?</p> <p>20 A. I don't know what that would have</p> <p>21 been in reference to. Do I recall saying those</p> <p>22 words?</p> <p>23 Q. Yes.</p> <p>24 A. No.</p> <p>25 Q. Actually, did you instruct Kik at</p> | <p>1 A. I'm not sure where you are going</p> <p>2 with that question, but part of investor</p> <p>3 protection is disclosure to investors.</p> <p>4 Q. I am just asking what was said at</p> <p>5 the meeting. So I am asking you, did you, or</p> <p>6 anyone else from the OSC, tell Kik at the meeting</p> <p>7 that it had to provide certain information to</p> <p>8 purchasers in the public sale?</p> <p>9 A. That sounds reasonable, but I</p> <p>10 don't recall those words exactly.</p> <p>11 Q. Do you recall saying that in sum</p> <p>12 or substance?</p> <p>13 A. Could you repeat that?</p> <p>14 Q. I mean, you're saying you don't</p> <p>15 recall that exactly, and I'm asking whether or not</p> <p>16 you recall stating that even generally?</p> <p>17 A. Someone on my team probably would</p> <p>18 have done that, yes.</p> <p>19 Q. You're saying probably would have.</p> <p>20 I am asking whether you recall them doing so?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Who?</p> <p>23 A. One of the attendees that was</p> <p>24 there. Most likely, Amy Tsai.</p> <p>25 Q. Now most likely suggests that it's</p> |
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| <p>1 the meeting not to sell Kin without registration?</p> <p>2 A. We talked about registration</p> <p>3 relief, so the implication is that we talked about</p> <p>4 registration, yes.</p> <p>5 Q. But, did you actually talk about</p> <p>6 registration? Did you actually instruct Kik that</p> <p>7 it should not sell Kin without registration?</p> <p>8 A. I would expect that we did, yes.</p> <p>9 Q. But, do you recall doing so?</p> <p>10 A. Again, if we are talking about</p> <p>11 registration relief, that means we have told them</p> <p>12 that we think they need to be registered.</p> <p>13 Q. And I'm asking you whether you</p> <p>14 recall, as you sit here today, telling them they</p> <p>15 needed to be registered?</p> <p>16 A. In those words, no, I don't recall</p> <p>17 that. But, we would have discussed registration</p> <p>18 and prospectus requirements.</p> <p>19 Q. During the meeting did you ask for</p> <p>20 any additional information?</p> <p>21 A. I don't recall.</p> <p>22 Q. At the meeting, did you, or anyone</p> <p>23 else from the OSC side, tell Kik that it had to</p> <p>24 provide certain information to purchasers in the</p> <p>25 public sale?</p> | <p>1 a prediction. I am asking whether you recall...</p> <p>2 A. No, I don't recall.</p> <p>3 Q. Did you, or anyone else from OSC,</p> <p>4 tell Kik that Kin was subject to resale</p> <p>5 restrictions?</p> <p>6 A. Yes.</p> <p>7 Q. Who? Did you?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And what did you say in</p> <p>10 that regard?</p> <p>11 A. I believe at the time they were</p> <p>12 looking...we talked about prospectus exemptions.</p> <p>13 One of the ones that is commonly used by ICOs is</p> <p>14 the offering memorandum exemption, but it's only</p> <p>15 allowed for primary distribution. So there would</p> <p>16 be no ability to do resale or secondary trading.</p> <p>17 And I would have communicated that there are</p> <p>18 resale restrictions if they decide to go that</p> <p>19 route, and that's where I do recall the reaction</p> <p>20 from Ted Livingston.</p> <p>21 Q. Okay. Did you have any other face</p> <p>22 to face meetings with Kik, or its counsel, in</p> <p>23 August?</p> <p>24 A. Face to face meetings, no.</p> <p>25 Q. And so, as we close this meeting,</p> |

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| <p>1 is it fair to say that you believed that you</p> <p>2 definitively conveyed OSC's position that the</p> <p>3 proposed offering of Kin was an offering of</p> <p>4 securities?</p> <p>5 A. We definitely communicated the</p> <p>6 view that we believed that it was a security.</p> <p>7 Q. Can we have 23?</p> <p>8 MR. HARNISCH: Are you done with the</p> <p>9 meeting and moving to something else, or</p> <p>10 are you still on the meeting? I'm only</p> <p>11 asking because I could use a couple</p> <p>12 minutes.</p> <p>13 MR. CADIGAN: Yes, we are done with</p> <p>14 the meeting.</p> <p>15 MR. HARNISCH: Do you mind if we take</p> <p>16 a break?</p> <p>17 MR. CADIGAN: No, no.</p> <p>18</p> <p>19 --- upon recessing at 11:17 a.m.</p> <p>20 --- A BRIEF RECESS</p> <p>21 --- upon resuming at 11:34 a.m.</p> <p>22</p> <p>23 PAT CHAUKOS, resumed</p> <p>24 CONTINUED EXAMINATION BY MR. CADIGAN:</p> <p>25 Q. Ms. Chaukos, just before we leave</p> | <p>1 Q. Do you recall conveying that</p> <p>2 generally?</p> <p>3 A. I don't recall that.</p> <p>4 Q. You said that you looked at your</p> <p>5 notes, albeit a month ago. Do your notes reflect</p> <p>6 that you told Kik that the OSC's position was that</p> <p>7 the offering of Kin was an offering of securities?</p> <p>8 A. My notes reflect next steps, which</p> <p>9 were to ask...I asked them to think about</p> <p>10 investment limits for retail investors and resale</p> <p>11 restrictions, and that the offering, we believed,</p> <p>12 was a security, and that we were open to</p> <p>13 prospectus and registration relief.</p> <p>14 Q. So your notes reflect that you</p> <p>15 conveyed that you believed the offering of Kin was</p> <p>16 an offering of securities?</p> <p>17 A. No reason to talk about resale and</p> <p>18 all the other things unless it was.</p> <p>19 Q. I'm asking very pointedly whether</p> <p>20 your notes reflect your statement that you had</p> <p>21 told Kik directly that the OSC's position was that</p> <p>22 the offering of Kin was an offering of securities?</p> <p>23 A. No. Not in those words, no.</p> <p>24 Q. And you said that...you did say</p> <p>25 that you recall next steps being taken. Now, that</p> |
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| <p>1 the meeting altogether, I just had a few follow-up</p> <p>2 questions. So, I take it, given your prior</p> <p>3 testimony, that you did not convey at the end of</p> <p>4 the meeting that the OSC was still considering the</p> <p>5 matter as to whether the offering of Kin might not</p> <p>6 be an offering of securities?</p> <p>7 A. Our role is not to consider</p> <p>8 whether something is not a security. Our role is</p> <p>9 to help businesses understand how securities</p> <p>10 regulation applies. So the purpose of the meeting</p> <p>11 was to convey how we thought securities regulation</p> <p>12 would apply.</p> <p>13 Q. And I'm asking what was said at</p> <p>14 the meeting?</p> <p>15 A. Right.</p> <p>16 Q. And I'm saying, at the meeting...</p> <p>17 A. Right.</p> <p>18 Q. ...do you have a recollection at</p> <p>19 the meeting as to whether you conveyed that the</p> <p>20 OSC was still considering the matter as to whether</p> <p>21 the offering of Kin was an offering of securities?</p> <p>22 I just want to know whether you remember conveying</p> <p>23 that at the meeting.</p> <p>24 A. I don't recall conveying that</p> <p>25 exactly, no.</p> | <p>1 you have mentioned those. I want to just go to</p> <p>2 your memory of the meeting. What were the next</p> <p>3 steps that you described to Kik?</p> <p>4 A. Next steps were we took the view</p> <p>5 that we thought it was an offering of securities</p> <p>6 and that we would like them to think about resale</p> <p>7 restrictions, because they had talked about</p> <p>8 wanting resale, and investment limits for retail</p> <p>9 investors.</p> <p>10 Q. And in your mind as you left the</p> <p>11 meeting, you believe that you had conveyed to them</p> <p>12 that it was a closed issue as to whether or not</p> <p>13 the offering of Kin was an offering of securities?</p> <p>14 A. I think we conveyed, based on the</p> <p>15 information we had at the meeting, that we thought</p> <p>16 it was a security.</p> <p>17 Q. And in coming to that conclusion</p> <p>18 that the offering of Kin was an offering of</p> <p>19 securities, describe all the steps you took to</p> <p>20 come to that conclusion.</p> <p>21 MR. HARNISCH: Didn't we go over that</p> <p>22 before?</p> <p>23 THE WITNESS: Yes, I feel like we</p> <p>24 have done this.</p> <p>25 MR. CADIGAN: No, I</p> |

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| <p style="text-align: right;">Page 99</p> <p>1 wasn't...actually, you wouldn't let me</p> <p>2 get into that, so I just want to make</p> <p>3 sure I have this for the record.</p> <p>4</p> <p>5 BY MR. CADIGAN:</p> <p>6 Q. What were all the steps you took</p> <p>7 into coming to that conclusion?</p> <p>8 MR. HARNISCH: In fairness, the</p> <p>9 record will speak for itself. I think we</p> <p>10 did go over that in the context of the</p> <p>11 meeting and what was said and why.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. You know, I'm talking about...I</p> <p>15 mean, you didn't come to that decision on the spot</p> <p>16 at the meeting, did you?</p> <p>17 A. No.</p> <p>18 Q. Okay. So what were the steps you</p> <p>19 took, we will go prior to the meeting, to come to</p> <p>20 the conclusion that the offering of Kin was an</p> <p>21 offering of securities?</p> <p>22 A. The material, the letter from Ross</p> <p>23 McKee. My team would have reviewed the white</p> <p>24 paper. The information we gathered as part of the</p> <p>25 meeting only helped, in my mind, confirm that we</p> | <p style="text-align: right;">Page 101</p> <p>1 legal analysis did you do prior to the meeting to</p> <p>2 ascertain that the offering of Kin was an offering</p> <p>3 of securities?</p> <p>4 A. Did I do?</p> <p>5 Q. You and your team.</p> <p>6 MR. HARNISCH: Hang on. I think, in</p> <p>7 fairness, you may be having some</p> <p>8 assumptions that are not necessarily</p> <p>9 accurate, in reviewing the particular</p> <p>10 materials that Pat mentioned in the</p> <p>11 context of all of the other things that</p> <p>12 she had mentioned that to do "analysis"</p> <p>13 or to help form a view requires doing</p> <p>14 something different and distinct. And</p> <p>15 reviewing that somehow can't take the</p> <p>16 knowledge that they have for being</p> <p>17 familiar with these issues for stuff that</p> <p>18 they are doing, and form a judgment. So</p> <p>19 I just think there's a misunderstanding</p> <p>20 built into your question.</p> <p>21 MR. CADIGAN: And she can answer</p> <p>22 that, although you did it very eloquently</p> <p>23 there.</p> <p>24</p> <p>25 BY MR. CADIGAN:</p> |
| <p style="text-align: right;">Page 100</p> <p>1 thought it was a security.</p> <p>2 Q. What you just mentioned discusses</p> <p>3 reviewing those materials. And, I guess what I'm</p> <p>4 saying is, at what point did you do the analysis</p> <p>5 of the legal principles on those materials to</p> <p>6 assess whether or not it was a security?</p> <p>7 A. So we would have done...</p> <p>8 Q. And more to the point, what did</p> <p>9 you do in that regard in terms of taking the</p> <p>10 materials reviewed and compare that to the</p> <p>11 relevant authorities?</p> <p>12 A. Again, our role is not to do legal</p> <p>13 analysis. Our role is to provide support to novel</p> <p>14 Fintech businesses. We had been working on a CSA</p> <p>15 notice. We had heard many of the arguments</p> <p>16 before, and so we had come up with a policy</p> <p>17 decision which was communicated on August 24th to</p> <p>18 the industry, to the public in terms of our</p> <p>19 position. What I did say to Ross McKee and Kik in</p> <p>20 the meeting is the notice was coming, because they</p> <p>21 were making various arguments that others had made</p> <p>22 to us before, and how we thought that did not mean</p> <p>23 that it was not a security.</p> <p>24 Q. You said it wasn't your role to do</p> <p>25 legal analysis, or provide legal advice. What</p> | <p style="text-align: right;">Page 102</p> <p>1 Q. What legal analysis did you do</p> <p>2 prior to the meeting on...</p> <p>3 A. Specific to Kin?</p> <p>4 Q. Specific to the offering of Kin</p> <p>5 and whether or not it was an offering of</p> <p>6 securities. At the meeting you claim that you</p> <p>7 very definitively said that the offering of Kin</p> <p>8 was an offering of securities. And I'm saying,</p> <p>9 what legal analysis did you do prior to the</p> <p>10 meeting to come to that decision?</p> <p>11 A. And I am going to say, I did not</p> <p>12 use the word "definitively". I said we reviewed</p> <p>13 the letter from Ross McKee. We did not agree with</p> <p>14 the analysis in the letter which is why we asked</p> <p>15 for the meeting. We needed to understand the</p> <p>16 utility functions of the Kin tokens during the</p> <p>17 meeting, and there was nothing that came up in</p> <p>18 terms of how they described it, that changed our</p> <p>19 view that we thought the Kin offering was a public</p> <p>20 sale of securities, full stop.</p> <p>21 Q. In coming to that decision, did</p> <p>22 you review any case law, or any guidance to help</p> <p>23 you come to that decision?</p> <p>24 A. We had already done that in order</p> <p>25 to publish the guidance that was coming out on</p> |

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| <p>1 August 24th.</p> <p>2 Q. And did you look at that guidance</p> <p>3 specifically with respect to Kin?</p> <p>4 A. I don't recall, but I imagine we</p> <p>5 would have.</p> <p>6 Q. But, you don't recall doing so?</p> <p>7 A. No.</p> <p>8 Q. Did you have any internal</p> <p>9 discussions about what elements or prongs of the</p> <p>10 Pacific Coin Coast test applied or did not apply</p> <p>11 in the Kik situation?</p> <p>12 MR. HARNISCH: Just say "Yes", "No",</p> <p>13 or "I don't recall".</p> <p>14 THE WITNESS: Yes.</p> <p>15</p> <p>16 BY MR. CADIGAN:</p> <p>17 Q. In relation to the meeting, when</p> <p>18 did you have those discussions?</p> <p>19 A. I don't recall.</p> <p>20 Q. And who did you have those</p> <p>21 discussions with?</p> <p>22 A. My team.</p> <p>23 Q. And did you break down each of the</p> <p>24 prongs of the Pacific Coin Coast test with respect</p> <p>25 to Kin...</p> | <p>1</p> <p>2 BY MR. CADIGAN:</p> <p>3 Q. For the record, I am handing you what</p> <p>4 has been marked as Exhibit 114. It is an e-mail to</p> <p>5 Amy Tsai and you from Ross McKee dated August 15,</p> <p>6 2017, Bates stamped SEC 2068 to 2069. This was an e-</p> <p>7 mail that Ross McKee sent you the day after the</p> <p>8 meeting; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And in it, he thanks you for</p> <p>11 arranging the meeting; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And at the end, he says:</p> <p>14 "...If you have any other questions, please</p> <p>15 don't hesitate to contact me..."</p> <p>16 Right?</p> <p>17 A. Yes.</p> <p>18 MR. CADIGAN: I next want to hand you</p> <p>19 what has been marked as Exhibit 115.</p> <p>20</p> <p>21 --- EXHIBIT NO. 115: E-mail dated August 22, 2017 from Mr.</p> <p>22 McKee to Ms. Chaukos</p> <p>23</p> <p>24 BY MR. CADIGAN:</p> <p>25 Q. It is an e-mail chain the last of</p> |
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| <p>1 MR. HARNISCH: I will object to that</p> <p>2 and draw the line there because, again,</p> <p>3 for all the reasons we have said before,</p> <p>4 we are not going to have Pat talk about</p> <p>5 the substance of discussions that were</p> <p>6 had internally at the OSC.</p> <p>7 MR. CADIGAN: Okay. So you are</p> <p>8 instructing her not to answer that</p> <p>9 question?</p> <p>10 MR. HARNISCH: Yes. In case that was</p> <p>11 not clear, yes.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. Now, after the meeting did you</p> <p>15 have any further internal discussions about</p> <p>16 whether the offering of...the sale of Kin was</p> <p>17 an offering of securities?</p> <p>18 MR. HARNISCH: Same instruction. "Yes",</p> <p>19 "No", "Don't recall".</p> <p>20 THE DEPONENT: I don't recall.</p> <p>21 MR. CADIGAN: I will mark the next</p> <p>22 exhibit as Exhibit 114.</p> <p>23</p> <p>24 --- EXHIBIT NO. 114: E-mail dated August 15, 2017 from Mr.</p> <p>25 McKee to Ms. Chaukos and Ms. Tsai</p> | <p>1 which is an e-mail to you from Ross McKee dated</p> <p>2 August 22nd, 2017. And it is Bates stamped SEC OSC</p> <p>3 2080 to 2083. And this is an e-mail chain in which</p> <p>4 you and Ross McKee were on; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And in it, you were e-mailing him in</p> <p>7 response to an article regarding the Kin offering via</p> <p>8 the SAFT offering; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And in it, you said:</p> <p>11 "...If this is an offering to the public, we</p> <p>12 would like to discuss what you are providing</p> <p>13 to investors and how you will comply with</p> <p>14 resale restrictions and other</p> <p>15 requirements..."</p> <p>16 Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And he responded to you:</p> <p>19 "...As we explained in detail when we met,</p> <p>20 we believe that legally it falls squarely</p> <p>21 within the virtual currency types, not</p> <p>22 investment contracts under all the Canadian</p> <p>23 and U.S. legal tests, and thus in this case</p> <p>24 and use is not a security..."</p> <p>25 And it says:</p> |

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| <p>1 "...Since it is not a security, resale</p> <p>2 restrictions would not apply, any more than</p> <p>3 they do to Bitcoin transactions..."</p> <p>4 Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And you didn't respond to this e-mail</p> <p>7 by telling him "we already told you we believed that</p> <p>8 this is a security", did you?</p> <p>9 A. I don't believe I did, no.</p> <p>10 MR. CADIGAN: The next exhibit is marked</p> <p>11 Exhibit 116.</p> <p>12</p> <p>13 --- EXHIBIT NO. 116: E-mail chain dated August 23, 2017</p> <p>14 from Mr. McKee to Ms. Chaukos</p> <p>15</p> <p>16 THE DEPONENT: Sorry, can I go back to</p> <p>17 that?</p> <p>18 MR. CADIGAN: Sure.</p> <p>19 THE DEPONENT: I did respond to him at</p> <p>20 11:38, though, and it says:</p> <p>21 "...What you are providing to investors..."</p> <p>22 Which was the disclosure to investors that</p> <p>23 we discussed at the meeting and how you will</p> <p>24 comply with resale and other requirements.</p> <p>25 Which was, again, discussed at the...</p> | <p>1 stamp. Based upon the content, it</p> <p>2 discussed...I mean, there is a question</p> <p>3 about the article that he responds to in the</p> <p>4 successive e-mail at the top of the chain.</p> <p>5 MR. SCHLEGELMILCH: I am just...</p> <p>6 MR. CADIGAN: But, yes...</p> <p>7 MR. SCHLEGELMILCH: I am just...because I</p> <p>8 am not...it is not clear to me.</p> <p>9 MR. CADIGAN: ...we will...okay, we will</p> <p>10 note that for the record. Thank you.</p> <p>11</p> <p>12 BY MR. CADIGAN:</p> <p>13 Q. I am handing you what has been marked</p> <p>14 next as Exhibit 116. And by the way, for the record,</p> <p>15 the Bates stamps were cut off on the copy we have</p> <p>16 made so for now they have been handwritten in. But</p> <p>17 it is...it is an e-mail from Ross...or an e-mail</p> <p>18 chain from Ross McKee the last of which is Ross McKee</p> <p>19 to Ms. Chaukos dated August 23rd, 2017, Bates stamped</p> <p>20 SEC-OSC 50 through 54. And this is an e-mail chain</p> <p>21 that you received; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And if you turn over to the prior</p> <p>24 page, there is the e-mail chain that we just</p> <p>25 discussed in Exhibit 115; correct?</p> |
| Page 108 | Page 110 |
| <p>1</p> <p>2 BY MR. CADIGAN:</p> <p>3 Q. Yes, and thereafter he said, well,</p> <p>4 this is not a security and thus doesn't need those</p> <p>5 things.</p> <p>6 A. Right.</p> <p>7 Q. In response to that, you didn't say,</p> <p>8 "We already told you we believe this is a security",</p> <p>9 is that right?</p> <p>10 A. Yes.</p> <p>11 MR. SCHLEGELMILCH: Counsel, can I just</p> <p>12 make a note on this exhibit? It looks like</p> <p>13 the top e-mail came in before the bottom e-</p> <p>14 mail based on the time stamp. The top e-</p> <p>15 mail is at 11:02:59 a.m. and the bottom e-</p> <p>16 mail is 11:38. So, the chain is flipped...</p> <p>17 THE DEPONENT: Yes.</p> <p>18 MR. SCHLEGELMILCH: ...than how they</p> <p>19 normally appear in an e-mail chain when they</p> <p>20 print out. I don't know if it is a time</p> <p>21 zone issue or something like that, but I</p> <p>22 will note that it does look like the second</p> <p>23 e-mail is responsive to the first based on</p> <p>24 the time stamp.</p> <p>25 MR. CADIGAN: Based solely on the time</p> | <p>1 A. Yes.</p> <p>2 Q. And in response to that e-mail chain,</p> <p>3 you e-mailed Mr. McKee on August 22nd at the bottom</p> <p>4 of the first page and said:</p> <p>5 "...We will come back to you on the public</p> <p>6 sale component..."</p> <p>7 Is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And you asked if he had provided any</p> <p>10 analysis of this aspect other than the initial letter</p> <p>11 describing Kik's plan; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you didn't have any verbal</p> <p>14 discussions with Mr. McKee on August 21 or 22, did</p> <p>15 you?</p> <p>16 A. I don't recall that.</p> <p>17 MR. CADIGAN: The next has been marked as</p> <p>18 Exhibit 117.</p> <p>19</p> <p>20 --- EXHIBIT NO. 117: E-mail chain ending August 25, 2017</p> <p>21 between Mr. McKee, Mr. Heinke et al</p> <p>22</p> <p>23 BY MR. CADIGAN:</p> <p>24 Q. I am handing you what has been marked</p> <p>25 as Exhibit 117. I note that you are not on the last</p> |

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| <p>1 two e-mails, but it is true that you are on the e-</p> <p>2 mail chain starting at the second page; right? For</p> <p>3 the record, this is...117 is a chain of e-mails, the</p> <p>4 last of which is an e-mail from Peter Heinke to Ross</p> <p>5 McKee and others dated August 25th, 2017, Bates</p> <p>6 stamped KIK 86881 through 86886. I want to turn to</p> <p>7 the last e-mail in this. This is...</p> <p>8 A. Sorry, my e-mail?</p> <p>9 Q. Yes.</p> <p>10 A. Okay.</p> <p>11 Q. I take it back. Go to the first e-</p> <p>12 mail, please. The first in time e-mail Bates stamped</p> <p>13 86885. This is an e-mail from Ross McKee...I mean</p> <p>14 from Amanda Barone to Ross McKee dated August 24,</p> <p>15 2017; is that right?</p> <p>16 A. You are talking about August 24th?</p> <p>17 Q. Yes.</p> <p>18 A. At 11:44 a.m.?</p> <p>19 Q. Yes.</p> <p>20 A. Yes.</p> <p>21 Q. And who is Amanda Barone?</p> <p>22 A. She is our Fintech coordinator.</p> <p>23 Q. And in it, she states:</p> <p>24 "...As a team member on the OSC LaunchPad</p> <p>25 team, Pat and Amy have asked me to</p> | <p>1 notice going out, what other, if any, guidance had</p> <p>2 CSA or OSC provided relating to the factors that were</p> <p>3 relevant to determining whether a cryptocurrency was</p> <p>4 subject to securities laws?</p> <p>5 A. Well, the Securities Act and the case</p> <p>6 law stand and apply to all this...the purpose of this</p> <p>7 notice was to explain to businesses that are doing</p> <p>8 cryptocurrency offering or trading platforms how</p> <p>9 securities regulation applies to them.</p> <p>10 Q. But this was the first such guidance</p> <p>11 provided by the CSA or the OSC on this topic;</p> <p>12 correct?</p> <p>13 A. Well, no, the OSC had done a media</p> <p>14 release too in March of 2017 to say that we thought</p> <p>15 securities regulation would apply to these</p> <p>16 businesses.</p> <p>17 Q. And, again, that didn't go through</p> <p>18 the factors that you would consider in determining</p> <p>19 whether or not a cryptocurrency was subject to</p> <p>20 securities laws; right? The March, 2017 one did not?</p> <p>21 A. No. That is what the law firms do.</p> <p>22 Q. But that release itself did not do?</p> <p>23 A. No.</p> <p>24 Q. Okay. I mean, you say that is what</p> <p>25 the law firms do. Are you saying it is not the OSC's</p> |
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| <p>1 communicate recent media release and CSA</p> <p>2 staff notice on Cryptocurrency Offerings..."</p> <p>3 A. M'hmm.</p> <p>4 Q. Did you, in fact, ask her to send</p> <p>5 this media release and staff notice to Ross McKee?</p> <p>6 A. Yes, we told Ross and Kik that we</p> <p>7 would send it to them once it was published.</p> <p>8 MR. CADIGAN: Let's mark this as the next</p> <p>9 exhibit, 118.</p> <p>10</p> <p>11 --- EXHIBIT NO. 118: CSA Staff Notice dated August 24,</p> <p>12 2017</p> <p>13</p> <p>14 BY MR. CADIGAN:</p> <p>15 Q. Ms. Chaukos, I am handing you what</p> <p>16 has been marked as Exhibit 118. It is the CSA staff</p> <p>17 notice dated August 24, 2017 Bates stamped KIK 34311</p> <p>18 through 34316. This is, in fact, the CSA staff</p> <p>19 notice dated August 24th, 2017; right?</p> <p>20 A. Yes.</p> <p>21 Q. And this was the e-mail that you had</p> <p>22 asked Ms. Barone to send out; is that right?</p> <p>23 A. Yes. The notice I asked her to send</p> <p>24 out.</p> <p>25 Q. The notice, yes. And prior to this</p> | <p>1 responsibility to provide guidance on these topics?</p> <p>2 A. To provide guidance in terms of how</p> <p>3 securities regulation could apply to the business.</p> <p>4 You are asking about the case law. The law</p> <p>5 is...stands. It is the law and the Securities Act is</p> <p>6 the Securities Act. So, you apply those requirements</p> <p>7 to the businesses. Our role is just to provide</p> <p>8 support to the businesses in how some of those</p> <p>9 regulatory requirements apply to their business.</p> <p>10 Q. But do you believe it is the OSC's</p> <p>11 position to provide guidance as to how the OSC is</p> <p>12 going to be interpreting those laws?</p> <p>13 A. Yes, we do that.</p> <p>14 Q. Okay, and had you done that with</p> <p>15 respect to cryptocurrencies prior to the August 24th,</p> <p>16 2017 release? In other words, had you provided</p> <p>17 guidance as to how the OSC would be looking at the</p> <p>18 factors in determining whether or not</p> <p>19 cryptocurrencies were securities?</p> <p>20 A. Formal guidance, no.</p> <p>21 Q. And this notice was published in all</p> <p>22 jurisdictions in Canada other than Saskatchewan; is</p> <p>23 that right?</p> <p>24 A. I think it was subsequently in</p> <p>25 Saskatchewan as well.</p> |

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| <p>1 Q. And it came from the staff of the</p> <p>2 Canadian Securities Administrators; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. It did not come from the Canadian</p> <p>5 Securities Administrators themselves; is that right?</p> <p>6 A. That is...that is...it is not really</p> <p>7 an entity. It is an umbrella organization of all the</p> <p>8 provincial securities regulators.</p> <p>9 Q. So, the staff of the securities</p> <p>10 regulators can issue these notices without having to</p> <p>11 get authority from the administrators themselves; is</p> <p>12 that right?</p> <p>13 A. They get the authority from...so, I</p> <p>14 would get the authority from the OSC and the Act.</p> <p>15 B.C. would get it from their Act and their</p> <p>16 authorities and their executive. It is representing</p> <p>17 a harmonized position on how we are going to apply</p> <p>18 securities regulation to cryptocurrency offerings.</p> <p>19 Q. And the purpose of the notice was to</p> <p>20 help Fintech businesses understand what obligations</p> <p>21 might apply under securities laws; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And did it provide guidance in terms</p> <p>24 of helping Fintech businesses understand whether the</p> <p>25 securities laws applied in the first place?</p> | <p>1 offerings. This is in response to what we</p> <p>2 heard from multiple stakeholders.</p> <p>3</p> <p>4 BY MR. CADIGAN:</p> <p>5 Q. And if you go to what has been marked</p> <p>6 as...actually, let me step back. If you go to</p> <p>7 page...what is Bates stamped 34313.</p> <p>8 A. Okay.</p> <p>9 Q. If you look at the third paragraph,</p> <p>10 it says:</p> <p>11 "...Every ICO/ITO is unique and must be</p> <p>12 assessed on its own characteristics..."</p> <p>13 Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And you agree with that statement;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And provided as an example, it says:</p> <p>19 "...For example, if an individual purchases</p> <p>20 coins/tokens that allow him/her to play</p> <p>21 video games on a platform, it is possible</p> <p>22 that securities might not be involved..."</p> <p>23 Is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And there are other use cases, you</p> |
| Page 116 | Page 118 |
| <p>1 MR. SCHLEGELMILCH: Objection. Form.</p> <p>2 THE DEPONENT: I am not sure what you are</p> <p>3 getting at with your question.</p> <p>4</p> <p>5 BY MR. CADIGAN:</p> <p>6 Q. Well, I think you had indicated that</p> <p>7 it was the responsibility of the law firms to</p> <p>8 actually do the analysis under the law. And what I</p> <p>9 am asking is whether or not it was the intent of this</p> <p>10 document to provide that sort of legal guidance to</p> <p>11 Fintech businesses to understand whether the</p> <p>12 securities laws and prongs would apply to their</p> <p>13 particular businesses.</p> <p>14 MR. HARNISCH: In fairness, I think she</p> <p>15 said law firms take steps to do that, not</p> <p>16 necessarily that it was their, and their</p> <p>17 alone, responsibility. But the record will</p> <p>18 reflect whatever was actually said.</p> <p>19 THE DEPONENT: Am I responding?</p> <p>20 MR. HARNISCH: Yes, sure.</p> <p>21 THE DEPONENT: The purpose of this</p> <p>22 notice...this was a novel area. We found</p> <p>23 that many businesses and their advisors were</p> <p>24 asking for clarity from the regulators on</p> <p>25 how securities regulation applies to these</p> | <p>1 would agree, that would make the purchase of a token</p> <p>2 fall outside securities laws; right?</p> <p>3 A. Yes.</p> <p>4 Q. Now, the notice provides a four prong</p> <p>5 test that businesses should apply in determining</p> <p>6 whether an investment contract exists; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that is an investment of money,</p> <p>9 in a common enterprise, with the expectation of</p> <p>10 profit, and to come significantly from the efforts of</p> <p>11 others; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. There is no further guidance that</p> <p>14 breaks down how these individual elements should be</p> <p>15 considered; is that right?</p> <p>16 A. No, that is in case law.</p> <p>17 Q. And the next two and a half pages of</p> <p>18 this notice discuss only what a business must do if</p> <p>19 issuing a coin or token that is a security; is that</p> <p>20 right?</p> <p>21 A. Yes, some of the requirements. Yes.</p> <p>22 Q. Going back to Exhibit 117. If you go</p> <p>23 to what has been Bates stamped KIK 86885. Following</p> <p>24 the e-mail that Ms. Barone sent attaching the media</p> <p>25 release, you sent an e-mail to Mr. McKee attaching</p> |

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| <p style="text-align: right;">Page 119</p> <p>1 the Impak decision; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And that decision was from the CSA</p> <p>4 Regulatory Sandbox granting relief from registration</p> <p>5 requirements provided the applicant met certain</p> <p>6 criteria; right?</p> <p>7 A. Yes.</p> <p>8 Q. What is the CSA Regulatory Sandbox?</p> <p>9 A. It is similar to how we have an OSC</p> <p>10 LaunchPad team. Each of the other provincial</p> <p>11 securities regulators have dedicated staff that look</p> <p>12 at these novel Fintech businesses or these</p> <p>13 applications, exemptive relief applications that we</p> <p>14 get. And we do that in order to allow, let's say, an</p> <p>15 Ontario business to operate across Canada or a B.C.</p> <p>16 business to operate in Ontario. So we want to make</p> <p>17 sure that we have harmonized decisions to make it</p> <p>18 easier for Fintech businesses to operate in Canada.</p> <p>19 MR. CADIGAN: Can we take a second?</p> <p>20</p> <p>21 --- DISCUSSION OFF THE RECORD</p> <p>22</p> <p>23 MR. CADIGAN: For the record, and with</p> <p>24 counsel and the parties' indulgence, the</p> <p>25 original Bates stamped document referenced</p> | <p style="text-align: right;">Page 121</p> <p>1 BY MR. CADIGAN:</p> <p>2 Q. The first e-mail is an e-mail from</p> <p>3 Ms. Barone to Ross McKee.</p> <p>4 A. Yes?</p> <p>5 Q. Attaching the August 24 CSA notice;</p> <p>6 right?</p> <p>7 A. And also a Globe & Mail article, yes.</p> <p>8</p> <p>9 Q. And then following up on that e-mail,</p> <p>10 you sent Mr. McKee the Impak decision; is that right?</p> <p>11 A. Yes.</p> <p>12 MR. CADIGAN: And as we were discussing,</p> <p>13 I actually have marked as the next</p> <p>14 exhibit...is it 119?</p> <p>15</p> <p>16 --- EXHIBIT NO. 119: Impak decision notice dated August</p> <p>17 16, 2017</p> <p>18</p> <p>19 THE DEPONENT: I don't have it.</p> <p>20 MR. CADIGAN: It is being marked.</p> <p>21 MR. HARNISCH: I am guessing that is the</p> <p>22 Impak decision. Do you have extras?</p> <p>23</p> <p>24 BY MR. CADIGAN:</p> <p>25 Q. I am handing you what has been marked</p> |
| <p style="text-align: right;">Page 120</p> <p>1 was actually a document that had been</p> <p>2 initially produced and then clawed back. We</p> <p>3 are, therefore, producing to replace that as</p> <p>4 Exhibit 117 the document KIK 86906 through</p> <p>5 86914. Again, an e-mail string the last of</p> <p>6 which is...actually, in this case the last</p> <p>7 of which is an e-mail from Ross McKee to</p> <p>8 Peter Heinke dated August 25th, 2017. And</p> <p>9 with that actually just to make sure that we</p> <p>10 have a clear record, let me just ask you</p> <p>11 some basic questions.</p> <p>12 If you go to...if you take a look at what</p> <p>13 replaced Exhibit 117, the first e-mail in this chain</p> <p>14 is an e-mail from Ms. Barone to you; is that right?</p> <p>15</p> <p>16 --- EXHIBIT NO. 117: E-mail chain dated August 25, 2017</p> <p>17 between Mr. McKee, Mr. Heinke et al</p> <p>18</p> <p>19 MR. HARNISCH: I don't think she has it.</p> <p>20 Do you have the...</p> <p>21 THE DEPONENT: I don't have it.</p> <p>22 MR. CADIGAN: I'm sorry.</p> <p>23 THE DEPONENT: I don't see anything from</p> <p>24 Ms. Barone to me.</p> <p>25</p> | <p style="text-align: right;">Page 122</p> <p>1 as Exhibit 119. This is the Impak decision that you</p> <p>2 sent to him, is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And in your e-mail to him, you said:</p> <p>5 "...In light of this decision and the ICO</p> <p>6 notice, we want to discuss the Kik offering</p> <p>7 to the public..."</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And in your e-mail, you didn't</p> <p>11 explain to Mr. McKee why you thought the Impak</p> <p>12 decision related to the offer or Kin; do you?</p> <p>13 A. Not in the e-mail, no.</p> <p>14 Q. And the first page of the Impak</p> <p>15 decision, if you would go to that, states:</p> <p>16 "...Relief granted based upon the particular</p> <p>17 facts and circumstances of the application</p> <p>18 with the objective of fostering capital</p> <p>19 raising by innovating startup businesses in</p> <p>20 Canada..."</p> <p>21 A. The head note?</p> <p>22 Q. Yes. It says:</p> <p>23 "...Decision should not necessarily be</p> <p>24 viewed as precedent for other filers in the</p> <p>25 jurisdictions of Canada..."</p> |

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| <p>1 Is that right?</p> <p>2 A. Yes, we do that standard as part of</p> <p>3 the CSA Regulatory Sandbox because a lot of what we</p> <p>4 are dealing with are novel businesses, so things may</p> <p>5 change quickly so we don't want it to be viewed as</p> <p>6 our precedent.</p> <p>7 Q. And why did you send this to Mr.</p> <p>8 McKee?</p> <p>9 A. It was an example of where we had</p> <p>10 provided prospectus and registration relief for a</p> <p>11 platform that was developing a platform for users to</p> <p>12 use in the future.</p> <p>13 Q. And going back to Exhibit 117 in his</p> <p>14 August 25th response to you starting at KIK 86909,</p> <p>15 Mr. McKee provided his analysis distinguishing the</p> <p>16 Impak decision; is that right?</p> <p>17 A. He does.</p> <p>18 Q. Did you agree with these</p> <p>19 distinctions?</p> <p>20 A. When you look at whether a Kin token</p> <p>21 is a security, you don't look to the Impak decision.</p> <p>22 You have to look at the facts and circumstances of</p> <p>23 the Kin token.</p> <p>24 Q. And did you ever convey to Mr. McKee</p> <p>25 that point or any response to his...his e-mail here</p> | <p>1 is providing the analysis. He is trying to</p> <p>2 make distinguishing factors.</p> <p>3</p> <p>4 BY MR. CADIGAN:</p> <p>5 Q. And then he says, for example, at</p> <p>6 page KIK 86910:</p> <p>7 "...CSAN 46307..."</p> <p>8 That is the staff notice, is that right?</p> <p>9 A. Yes.</p> <p>10 Q. "...provided only brief investment</p> <p>11 contract legal analysis but on the whole I</p> <p>12 thought the particular examples chosen were</p> <p>13 actually favourable to Kin..."</p> <p>14 Right?</p> <p>15 A. Yes.</p> <p>16 Q. And he highlights the video game use</p> <p>17 as one of the potential use cases of Kin; right?</p> <p>18 A. I would disagree with that.</p> <p>19 Q. You disagree that...I mean, he does</p> <p>20 that.</p> <p>21 A. He does that but I disagree that it</p> <p>22 was analogous to Kin.</p> <p>23 Q. Okay, did you ever...</p> <p>24 MR. HARNISCH: He is just asking what he</p> <p>25 wrote there.</p> |
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| <p>1 distinguishing the Impak decision?</p> <p>2 A. I don't recall right now, no.</p> <p>3 Q. And he also provides...Mr. McKee also</p> <p>4 provides an analysis of Kin under the August 24th CSA</p> <p>5 notice; is that right?</p> <p>6 A. I would have to review it for that.</p> <p>7 Give me a minute.</p> <p>8 Q. Yes, take your time.</p> <p>9 MR. HARNISCH: Do you want to point her</p> <p>10 to a particular page?</p> <p>11 THE DEPONENT: Yes.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. Well, if you look at the second...the</p> <p>15 third paragraph of his...the end of the second</p> <p>16 paragraph of his e-mail going forward.</p> <p>17 A. Sorry, starting with...what are we</p> <p>18 talking about, "It would therefore be appropriate to</p> <p>19 treat it as a security"?</p> <p>20 Q. Well, I mean, I am just...he provides</p> <p>21 his analysis of Kin under the CSA notice in this e-</p> <p>22 mail, doesn't he? I mean...</p> <p>23 MR. HARNISCH: I think she is reviewing</p> <p>24 the document.</p> <p>25 THE DEPONENT: M'hmm. I don't know if he</p> | <p>1 THE DEPONENT: Yes. Okay.</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. So, yes, he did state that in this e-</p> <p>5 mail, though?</p> <p>6 A. Yes, he did.</p> <p>7 Q. And you disagreed with that position?</p> <p>8 A. Yes.</p> <p>9 Q. Did you convey that your disagreement</p> <p>10 with...on that position to him?</p> <p>11 A. I don't believe I did. I feel like</p> <p>12 this was the typical response that we get.</p> <p>13 Q. And if you go to the end of his e-</p> <p>14 mail at KIK 86912, and again he has provided analysis</p> <p>15 under the...actually, I take it back. Is it fair to</p> <p>16 say that in his e-mails, he has attempted to provide</p> <p>17 analysis based upon the Impak decision, the CSA</p> <p>18 notice, and Pacific Coin; is that fair to say?</p> <p>19 A. Could you repeat the question?</p> <p>20 Q. Yes. In his e-mail...</p> <p>21 A. Right?</p> <p>22 Q. ...he is providing his analysis as to</p> <p>23 why the offering of Kin should not be considered in</p> <p>24 an offering of securities in light of Impak, the</p> <p>25 August 24 CSA notice, and Pacific Coast Coin.</p> |

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| <p>1 A. I think he says at the end of the e-</p> <p>2 mail, "Those are my preliminary thoughts on the Impak</p> <p>3 offering and the interpretation of the notice 46307".</p> <p>4 Q. But he also provides his analysis</p> <p>5 under Pacific Coin, doesn't he? He provides several</p> <p>6 quotes and analysis based upon Pacific Coin in the e-</p> <p>7 mail?</p> <p>8 A. He does do that.</p> <p>9 Q. And at the end of the e-mail, he</p> <p>10 says:</p> <p>11 "...These are my preliminary thoughts on</p> <p>12 Impak offering and interpretation of CSAN</p> <p>13 46307. I would appreciate if you and your</p> <p>14 team could consider these. If the staff's</p> <p>15 view is different, I would appreciate if you</p> <p>16 could please let me have the particulars of</p> <p>17 how and why the Kin offering does not in</p> <p>18 particular fit within the spot purchase</p> <p>19 examples of Pacific Coast Coin Exchange..."</p> <p>20 That is what he wrote to you, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you did not take this to be...you</p> <p>23 did not understand from this e-mail that, at least in</p> <p>24 his mind, the decision as to whether the offering of</p> <p>25 Kin was an offering of securities was not yet a</p> | <p>1 A. Again, that is not our role as</p> <p>2 LaunchPad team, no.</p> <p>3 Q. So you did not do so?</p> <p>4 A. I don't believe we did.</p> <p>5 Q. Now, on September 5th you had a phone</p> <p>6 call with Mr. McKee to convey your view that the</p> <p>7 public sale of Kin should be characterized as an</p> <p>8 offering of securities; right?</p> <p>9 A. I believe e-mails will confirm that</p> <p>10 but I don't recall the phone call itself.</p> <p>11 Q. You don't recall anything about the</p> <p>12 phone call?</p> <p>13 A. No.</p> <p>14 Q. You didn't take any notes of the</p> <p>15 call?</p> <p>16 A. I generally don't take notes of</p> <p>17 calls, no.</p> <p>18 Q. Did you prepare notes before making</p> <p>19 this call? Prepare notes of the call before making</p> <p>20 it?</p> <p>21 A. No.</p> <p>22 Q. You don't recall anything about the</p> <p>23 call?</p> <p>24 A. No.</p> <p>25 Q. Do you recall telling Mr. McKee in</p> |
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| <p>1 closed issue?</p> <p>2 MR. SCHLEGELMILCH: Objection.</p> <p>3 THE DEPONENT: I didn't take it that way.</p> <p>4 I took it that Ross McKee was making</p> <p>5 distinctions with cases and we have very</p> <p>6 clearly said in the notice that you have to</p> <p>7 look at the facts and circumstances of the</p> <p>8 offering. So, making distinctions with</p> <p>9 other decisions is not helpful. Or wasn't</p> <p>10 helpful, in my mind.</p> <p>11</p> <p>12 BY MR. CADIGAN:</p> <p>13 Q. And did you...we talked about the</p> <p>14 Impak decision but did you agree with Mr. McKee's</p> <p>15 analysis in this e-mail?</p> <p>16 A. I agree that he picked facts to</p> <p>17 distinguish how it was different from Kik but that</p> <p>18 did not persuade me that that impacted the analysis</p> <p>19 of the Kin token offering.</p> <p>20 Q. Did you discuss Mr. McKee's e-mail</p> <p>21 with other members of your LaunchPad team?</p> <p>22 A. I don't recall.</p> <p>23 Q. Did you convey...did you ever respond</p> <p>24 to Mr. McKee and lay out the reasons why you did not</p> <p>25 agree with his analysis in this e-mail?</p> | <p>1 early September on this call or otherwise that you</p> <p>2 had been under the impression that the Kin offering</p> <p>3 was taking place later in the fall and that you had</p> <p>4 more time to analyze the offering?</p> <p>5 A. I don't recall how I communicated</p> <p>6 that but I do recall having that discussion with</p> <p>7 Ross, yes.</p> <p>8 Q. And what did you say in that regard?</p> <p>9 A. I was struck by the fact that</p> <p>10 this...first of all, the article came out a week</p> <p>11 after we had had a discussion and my impression</p> <p>12 coming out of the meeting was this was going to be a</p> <p>13 launch in the fall. So I was struck by, first, the</p> <p>14 article, which is why I asked, "What is this about?</p> <p>15 What is this article about?" And then when I got</p> <p>16 the...I think I got an e-mail from Ross saying it was</p> <p>17 coming up soon. So, that may have been the prompt</p> <p>18 for that discussion.</p> <p>19 Q. And in that discussion, did you tell</p> <p>20 him that you had been...you had believed that you had</p> <p>21 more time to analyze the offering?</p> <p>22 A. I don't recall those words.</p> <p>23 Q. Did you tell Mr. McKee in that call</p> <p>24 that the OSC staff was still working on reviewing the</p> <p>25 submissions that they had made?</p> |

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| <p>1 A. I don't recall that either.</p> <p>2 Q. Do you recall telling Mr. McKee that</p> <p>3 you felt that the Kik offering was an investment with</p> <p>4 a risk of loss?</p> <p>5 A. I don't recall those words but had,</p> <p>6 you know...did I hold that view, that it was an</p> <p>7 investment with a risk of loss? Yes. But I don't</p> <p>8 recall telling Ross McKee on a particular phone call</p> <p>9 those words.</p> <p>10 Q. Do you recall telling him that your</p> <p>11 focus was on investor protection?</p> <p>12 A. Again, I don't recall exactly when</p> <p>13 that would have been communicated but that likely</p> <p>14 would have been communicated, yes.</p> <p>15 Q. Do you recall acknowledging to Mr.</p> <p>16 McKee in early August...I take it back, I'm sorry.</p> <p>17 Do you recall in early September telling Mr.</p> <p>18 McKee...acknowledging to Mr. McKee that the OSC had</p> <p>19 been criticized in the press for its little guidance</p> <p>20 to date?</p> <p>21 A. Could you repeat that?</p> <p>22 Q. Yes. In early September...</p> <p>23 A. Right?</p> <p>24 Q. ...do you recall acknowledging to Mr.</p> <p>25 McKee that the OSC had been criticized in the press</p> | <p>1 A. Do I know today that they had been</p> <p>2 provided to me at that point? No, I don't recall</p> <p>3 that.</p> <p>4 Q. So, you don't recall whether you</p> <p>5 actually had the...the agreements related to the</p> <p>6 public sale as of September 5th?</p> <p>7 A. I don't recall that, no.</p> <p>8 Q. As you sit here today, do you</p> <p>9 specifically recall that you had the SAFT agreements</p> <p>10 as of September 5th?</p> <p>11 A. The SAFT agreements, I believe we...I</p> <p>12 believe we had because I believe we asked for it.</p> <p>13 Q. Had you asked for the public sale</p> <p>14 agreement as of September 5th?</p> <p>15 A. Again, that is something I rely on my</p> <p>16 team for. You are asking me for details that my team</p> <p>17 would be working on.</p> <p>18 Q. No, but I am asking what your</p> <p>19 understanding was as to whether or not they actually</p> <p>20 had that. I mean...</p> <p>21 A. Whether they had it or not, I don't</p> <p>22 know that today, no. I expect that they would have</p> <p>23 asked for it.</p> <p>24 Q. But had you specifically asked them</p> <p>25 whether they had?</p> |
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| <p>1 for its little guidance to date?</p> <p>2 A. The only article that I know that we</p> <p>3 have been criticised for that is actually Kik's</p> <p>4 articles.</p> <p>5 Q. I am asking whether you recall saying</p> <p>6 that to Mr. McKee.</p> <p>7 A. I don't recall saying that.</p> <p>8 Q. And as of September 5th, do you</p> <p>9 believe that you had all the key documents relating</p> <p>10 to the transaction?</p> <p>11 A. I believe that we had adequate</p> <p>12 documents relating to the transaction.</p> <p>13 Q. Had you personally seen the proposed</p> <p>14 agreements relating to the SAFT or the public sale?</p> <p>15 A. I would rely on my team for that.</p> <p>16 Q. Do you know whether they saw them?</p> <p>17 A. They saw the SAFT agreements.</p> <p>18 Q. Did they see the documents related to</p> <p>19 the public sale?</p> <p>20 A. Anything that would have been given</p> <p>21 to us from Kik for us to review, someone on my team</p> <p>22 would have reviewed.</p> <p>23 Q. And that is what I am asking. Do you</p> <p>24 know that those materials had already been provided</p> <p>25 to you at that point?</p> | <p>1 A. I don't recall that.</p> <p>2 Q. On your call...again, do you recall</p> <p>3 telling Mr. McKee in the call on September 5th that</p> <p>4 the OSC would be open to discretionary relief using</p> <p>5 the Impak precedent?</p> <p>6 MR. HARNISCH: Just in fairness, I think</p> <p>7 she said before she doesn't remember a call</p> <p>8 on September 5th.</p> <p>9</p> <p>10 BY MR. CADIGAN:</p> <p>11 Q. Do you recall discussing verbally</p> <p>12 with Mr. McKee at any time in early September that</p> <p>13 the OSC would be open to discretionary relief using</p> <p>14 the Impak precedent?</p> <p>15 A. I don't recall those words. But my</p> <p>16 asking the Impak decision to be sent to Ross McKee</p> <p>17 indicated that we were open to discretionary relief.</p> <p>18 Q. But that is...and, again, you</p> <p>19 instructed somebody to send that to him; correct?</p> <p>20 A. No, I think I sent that...</p> <p>21 MR. HARNISCH: No...</p> <p>22</p> <p>23 BY MR. CADIGAN:</p> <p>24 Q. I'm sorry, you sent that to him.</p> <p>25 A. Yes.</p> |

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| <p style="text-align: right;">Page 135</p> <p>1 Q. But do you recall a verbal</p> <p>2 communication with him later related to, again, the</p> <p>3 suggestion that they might seek discretionary relief?</p> <p>4 A. I don't recall that but that sounds</p> <p>5 reasonable.</p> <p>6 Q. Do you recall telling him that there</p> <p>7 might be a delay if there were changes to the type of</p> <p>8 relief along the Impak lines...let me rephrase the</p> <p>9 question. Do you recall telling Mr. McKee that if</p> <p>10 Kik sought discretionary relief, there could be a</p> <p>11 delay if there were changes that had to go back to</p> <p>12 the CSA Sandbox?</p> <p>13 A. I don't recall those...</p> <p>14 MR. SCHLEGELMILCH: Objection.</p> <p>15 THE DEPONENT: ...words.</p> <p>16 MR. SCHLEGELMILCH: Sorry. Just for the</p> <p>17 record.</p> <p>18 THE DEPONENT: I don't recall those words</p> <p>19 but we do have to go through a CSA process,</p> <p>20 so that would take time.</p> <p>21 MR. HARNISCH: Is there any chance we can</p> <p>22 eat soon?</p> <p>23 MR. CADIGAN: Actually, why don't</p> <p>24 we...let me finish this line and then we can</p> <p>25 talk about that. Actually, this is a good</p> | <p style="text-align: right;">Page 137</p> <p>1 Huston Loke to Ross McKee</p> <p>2</p> <p>3 BY MR. CADIGAN:</p> <p>4 Q. I am next handing you what has been</p> <p>5 marked as Exhibit 120. It is a letter from Huston</p> <p>6 Loke to Ross McKee dated October 19th, 2017. And it</p> <p>7 is Bates stamped KIK 101675 through 101676. Have you</p> <p>8 seen this document?</p> <p>9 A. Yes.</p> <p>10 Q. And you were aware that the OSC's</p> <p>11 director of corporate finance had sent Mr. McKee this</p> <p>12 letter; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And had you had any role in helping</p> <p>15 to prepare this letter?</p> <p>16 A. No. To preparing it, no.</p> <p>17 Q. And, actually, after early September,</p> <p>18 did you have any further discussions with Mr. McKee?</p> <p>19 A. I did have a discussion with Mr.</p> <p>20 McKee in early September. There was an article that</p> <p>21 came to our attention that they were going ahead</p> <p>22 without...that Kik was going ahead with the offering</p> <p>23 of the public sale and excluding Canadian purchasers.</p> <p>24 Q. And you had a call with him at that</p> <p>25 time?</p> |
| <p style="text-align: right;">Page 136</p> <p>1 time. Can we go off the record?</p> <p>2</p> <p>3 --- upon recessing at 12:30 p.m.</p> <p>4 --- A LUNCHEON RECESS</p> <p>5 --- upon resuming at 1:45 p.m.</p> <p>6</p> <p>7 PAT CHAUKOS, resumed</p> <p>8 CONTINUED EXAMINATION BY MR. CADIGAN:</p> <p>9 Q. Ms. Chaukos, when last we were</p> <p>10 talking, we were talking about the early September,</p> <p>11 2017 time frame. Eventually, in or around that time</p> <p>12 frame, Kik informed you it would exclude Canadian</p> <p>13 purchasers from the public sale of Kin; is that</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. How did you learn that?</p> <p>17 A. I believe there was an e-mail from</p> <p>18 Ross McKee.</p> <p>19 Q. Do you know when that was?</p> <p>20 A. It would have been around the same</p> <p>21 time frame, I think.</p> <p>22 MR. CADIGAN: I would like to have this</p> <p>23 marked the next exhibit, 120.</p> <p>24</p> <p>25 --- EXHIBIT NO. 120: Letter dated October 19, 2017 from</p> | <p style="text-align: right;">Page 138</p> <p>1 A. Yes.</p> <p>2 Q. What was said on the call?</p> <p>3 A. I don't recall exactly but we</p> <p>4 were...I was quite frankly surprised and disappointed</p> <p>5 at the same time because we were expecting to work</p> <p>6 with Kik. They clearly did not come back to us with</p> <p>7 what alternative they were going ahead with. And the</p> <p>8 article referenced the fact that there was unclear</p> <p>9 guidance, even though there was guidance. And the</p> <p>10 fact that apparently Canadians could be involved in</p> <p>11 the token offering through secondary markets which,</p> <p>12 again, is something we had talked to him about that</p> <p>13 couldn't be done.</p> <p>14 Q. And did you express all that to Mr.</p> <p>15 McKee in this phone call?</p> <p>16 A. I expect that I did because I was...I</p> <p>17 would have picked up the phone at that point when I</p> <p>18 saw the article and I left him a voicemail message.</p> <p>19 And I believe he e-mailed me back when I saw the</p> <p>20 article because we had no advanced notice that this</p> <p>21 was even coming.</p> <p>22 Q. And so you had...so, you don't recall</p> <p>23 but you believe that is what you told him in your</p> <p>24 call?</p> <p>25 A. I believe that I would have said...I</p> |

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| <p>1 am going to reiterate.</p> <p>2 Q. Well, I am just asking if you</p> <p>3 recall...</p> <p>4 A. An article came out. They hadn't</p> <p>5 told us how they were going ahead. And then to have</p> <p>6 an article say there was, first of all, unclear</p> <p>7 guidance to them and at the same time they were</p> <p>8 excluding Canadians was disappointing in light of all</p> <p>9 the work we had done with Kik and counsel.</p> <p>10 Q. Yes, and that was what you were</p> <p>11 dealing with.</p> <p>12 A. Yes.</p> <p>13 Q. And what I am saying is, did you</p> <p>14 convey that to Mr. McKee in your call? Do you</p> <p>15 actually recall doing so?</p> <p>16 A. Do I actually recall doing so? I</p> <p>17 don't recall the exact words but I...I recall picking</p> <p>18 up the phone and calling Ross McKee, yes, when I saw</p> <p>19 the article.</p> <p>20 Q. And you believe that that is what you</p> <p>21 conveyed...</p> <p>22 A. Yes.</p> <p>23 Q. ...the substance of what you just</p> <p>24 said?</p> <p>25 A. Yes.</p> | <p>1</p> <p>2 BY MR. CADIGAN:</p> <p>3 Q. I am handing you what has been marked</p> <p>4 as Exhibit 121. It is a letter from Mr. McKee to Mr.</p> <p>5 Loke dated November 2nd, 2017, Bates stamped KIK</p> <p>6 00128199 through KIK 128223. Have you seen this</p> <p>7 document?</p> <p>8 A. I have seen it, yes.</p> <p>9 Q. Did you review it at the time it was</p> <p>10 sent on or about November 2nd, 2017?</p> <p>11 A. I reviewed the letter, not the</p> <p>12 appendices.</p> <p>13 Q. And to date, the OSC has taken no-</p> <p>14 action against Kik; is that right?</p> <p>15 A. No.</p> <p>16 MR. HARNISCH: Sorry, just...</p> <p>17 THE DEPONENT: No, it has not taken</p> <p>18 action.</p> <p>19 MR. CADIGAN: Okay, thank you.</p> <p>20</p> <p>21 BY MR. CADIGAN:</p> <p>22 Q. Just to clean up some of this, it is</p> <p>23 fair to say, isn't it, that the determination of</p> <p>24 whether the proposed offering of Kin was an offer or</p> <p>25 sales of securities was a legal decision; right?</p> |
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| <p>1 Q. After that discussion with Mr. McKee,</p> <p>2 did you have any further discussions with him?</p> <p>3 A. No.</p> <p>4 Q. How did Mr. McKee respond?</p> <p>5 A. He actually responded in a way that</p> <p>6 they decided to go ahead and that it would be</p> <p>7 announced today but it had already been announced, so</p> <p>8 I got the e-mail after it had already been announced</p> <p>9 or published.</p> <p>10 Q. And just to be clear, so after that</p> <p>11 discussion you had no further discussions or</p> <p>12 communications with Mr. McKee?</p> <p>13 A. Once they went ahead...</p> <p>14 Q. Yes.</p> <p>15 A. ...with the public offering? No, at</p> <p>16 that point it was referred to corporate finance.</p> <p>17 Q. Okay. And I am showing you Exhibit</p> <p>18 120, which was the letter from...is it pronounced</p> <p>19 "Loke"?</p> <p>20 A. Loke, yes.</p> <p>21 MR. CADIGAN: To Mr. McKee. Next exhibit</p> <p>22 marked, Exhibit 121.</p> <p>23</p> <p>24 --- EXHIBIT NO. 121: Letter dated November 2, 2017 from</p> <p>25 Mr. McKee to Mr. Loke</p> | <p>1 A. It is a legal analysis, yes.</p> <p>2 Q. And the OSC obviously didn't consider</p> <p>3 whether the proposed offering of Kin was an offer or</p> <p>4 sales of securities under U.S. law, did it?</p> <p>5 A. No, we did not.</p> <p>6 Q. In making its analysis, did the OSC</p> <p>7 make a determination that Kin itself was a security</p> <p>8 as opposed to whether the proposed offer of Kin was</p> <p>9 an investment contract?</p> <p>10 A. You are going to have to repeat that</p> <p>11 question.</p> <p>12 Q. Yes. What I want to understand is,</p> <p>13 did you do a separate analysis as to whether Kin</p> <p>14 itself was a security?</p> <p>15 A. The launch...okay, my team...</p> <p>16 Q. And, again, I want to be clear about</p> <p>17 the question. The analysis, as I have understood it,</p> <p>18 looked at an issue as to whether the offer or sale of</p> <p>19 Kin was an offer or sale of securities.</p> <p>20 A. Right.</p> <p>21 Q. And one might look at that in the</p> <p>22 investment context...investment contract context. My</p> <p>23 question is whether you analyzed whether Kin itself,</p> <p>24 the digital token, was itself a security.</p> <p>25 A. Well, obviously we had looked at the</p> |

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| <p>1 materials and come to that view. Whether it is in a</p> <p>2 written memo, that is the part I don't know...I don't</p> <p>3 recall.</p> <p>4 Q. And is the token Kin itself an</p> <p>5 investment contract?</p> <p>6 A. Well, there are many prongs but the</p> <p>7 Pacific Coin test is specific to the investment</p> <p>8 contract section, yes.</p> <p>9 Q. And I guess what I am asking is,</p> <p>10 again, taking the Kin itself separate and apart from</p> <p>11 the offer or sale of that, whether that particular</p> <p>12 token, instrument, vehicle, whatever you want to call</p> <p>13 it is itself a security. Did you analyze whether Kin</p> <p>14 itself in a vacuum is a security?</p> <p>15 A. I guess I am not understanding your</p> <p>16 question. The offering of the Kin token is what we</p> <p>17 looked at.</p> <p>18 Q. Right.</p> <p>19 A. Right?</p> <p>20 Q. And that is what I am asking, when</p> <p>21 you looked at the offering.</p> <p>22 A. Right.</p> <p>23 Q. When you looked at the offering of</p> <p>24 Kin...</p> <p>25 A. Right.</p> | <p>1 the OSC had with the SEC about Kik?</p> <p>2 MR. SCHLEGELMILCH: Objection.</p> <p>3 MR. HARNISCH: Again, I would object as</p> <p>4 well and direct Pat not to answer questions</p> <p>5 about communications between the OSC and the</p> <p>6 SEC.</p> <p>7 MR. CADIGAN: Okay, and I am going to ask</p> <p>8 you to be very specific about what grounds</p> <p>9 you are instructing her not to answer.</p> <p>10 MR. HARNISCH: It is the same basic</p> <p>11 rationale that I have given you before on</p> <p>12 the others. One, first of all, it is</p> <p>13 outside the scope of our agreement for</p> <p>14 appearing here voluntarily today, so first</p> <p>15 and foremost. But then with respect to work</p> <p>16 that the OSC does, it is non-public and</p> <p>17 confidential and that would include its</p> <p>18 work, communications, deliberations, any of</p> <p>19 those types of things with its co-regulators</p> <p>20 including the Securities and Exchange</p> <p>21 Commission. So, any of those types of</p> <p>22 things that are not otherwise public are</p> <p>23 beyond the scope of what Pat is going to be</p> <p>24 talking about today.</p> <p>25 MR. CADIGAN: And so, I mean, again, we</p> |
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| <p>1 Q. ...did you look at it in the</p> <p>2 investment contract context?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did you do a separate analysis</p> <p>5 as to whether Kin itself is a security?</p> <p>6 A. We would be looking at the offering</p> <p>7 of the Kin tokens, not the...not the Kin itself. I</p> <p>8 guess I am not understanding your distinction. We</p> <p>9 look at the offering of securities.</p> <p>10 Q. The pre-sale was conducted as a</p> <p>11 securities offering; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Did the OSC assess whether there were</p> <p>14 any issues with that offering?</p> <p>15 A. We looked at it and we agreed that it</p> <p>16 was a security.</p> <p>17 Q. And I believe we talked about some of</p> <p>18 the prongs. One prong I don't believe that we spent</p> <p>19 much time on, if any, was the common enterprise</p> <p>20 prong. What analysis did the OSC do to determine</p> <p>21 that there was a common enterprise implicated by the</p> <p>22 offering of Kin?</p> <p>23 A. I don't recall.</p> <p>24 Q. I next want to turn your attention to</p> <p>25 another topic. What was the first communication that</p> | <p>1 are not...we didn't agree to that so I</p> <p>2 know...</p> <p>3 MR. HARNISCH: I'm not...</p> <p>4 MR. CADIGAN: I know. I am just saying I</p> <p>5 want to be clear for the record when you</p> <p>6 said "our agreement", I just wanted to be</p> <p>7 clear that that is not the common "our"</p> <p>8 meaning your agreement with Kik on this.</p> <p>9 MR. HARNISCH: How about this? Let me</p> <p>10 say pursuant to the terms to which I said</p> <p>11 Pat would be willing to appear today and the</p> <p>12 topics that she would be willing and we</p> <p>13 would be willing to have her speak about.</p> <p>14 MR. CADIGAN: Right, that's fine. And so</p> <p>15 with respect to the...and I want to just</p> <p>16 understand this. So, you are</p> <p>17 claiming...what privilege or deliberative</p> <p>18 privilege?</p> <p>19 MR. HARNISCH: It is...</p> <p>20 MR. CADIGAN: Because I really want to be</p> <p>21 very specific so that I understand because,</p> <p>22 as you understand, the SEC is the other</p> <p>23 party in this transaction and it is</p> <p>24 generally fair game to ask about the</p> <p>25 communications that witnesses have had with</p> |

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| <p>1 the parties in this and they are doing that</p> <p>2 and so be it. I am asking you what</p> <p>3 privileges that you are asserting that would</p> <p>4 prevent us from understanding what</p> <p>5 communications the witness has had with the</p> <p>6 adverse party in this matter.</p> <p>7 MR. HARNISCH: Sure. And I will come</p> <p>8 back to a couple of things, right? One, I</p> <p>9 will come back to what we have said the</p> <p>10 terms are for her appearing today. So I</p> <p>11 understand that is not an answer to your</p> <p>12 question about a privilege. However, I can</p> <p>13 say that pursuant to OSC policies, the work</p> <p>14 that they do is non-public and confidential.</p> <p>15 And so therefore we are not going to have</p> <p>16 Pat talk about issues that were internal to</p> <p>17 the OSC that they were discussing either</p> <p>18 solely amongst themselves or with other</p> <p>19 regulators, right, unless that has otherwise</p> <p>20 been made public. And my</p> <p>21 understanding...somebody can correct me if I</p> <p>22 am wrong...that communications between these</p> <p>23 two regulators are not otherwise public. If</p> <p>24 you have something that is about a...you</p> <p>25 know, something that has been produced or</p> | <p>1 give you a, "Yes", or, "No", or, "I don't</p> <p>2 recall".</p> <p>3 MR. CADIGAN: M'hmm. Okay, that's fine.</p> <p>4</p> <p>5 BY MR. CADIGAN:</p> <p>6 Q. Did you have any conversations with</p> <p>7 the SEC about Kik prior to the August 14th meeting...</p> <p>8 A. No.</p> <p>9 Q. ...with Kik?</p> <p>10 A. No.</p> <p>11 Q. Did you have any conversations with</p> <p>12 the OSC...I mean with the SEC about Kik prior to</p> <p>13 September 5th, 2017?</p> <p>14 A. No.</p> <p>15 Q. Did you have any conversations with</p> <p>16 the SEC prior to its initiation of the investigation</p> <p>17 in this matter?</p> <p>18 A. Yes.</p> <p>19 Q. When was that communication?</p> <p>20 A. So, I am responding but I am also</p> <p>21 cognizant of what you...</p> <p>22 MR. HARNISCH: No, you can give a...I am</p> <p>23 okay with the when.</p> <p>24 THE DEPONENT: Oh. So, there was a call</p> <p>25 with the SEC a few days after the</p> |
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| <p>1 otherwise public, feel free...feel free to</p> <p>2 show me.</p> <p>3 MR. CADIGAN: We don't need to debate</p> <p>4 that either. There are many things that</p> <p>5 have come up that are not otherwise public</p> <p>6 between parties that come out in discovery.</p> <p>7 These are not internal discussions that I am</p> <p>8 asking about. They are not. They are</p> <p>9 discussions with a third party, a regulator</p> <p>10 from a separate entity. And, indeed, you</p> <p>11 know, we understand that, you know, there</p> <p>12 have been communications and you saying that</p> <p>13 were not...</p> <p>14 MR. HARNISCH: I am listening to you. I</p> <p>15 have just got to close the blind here.</p> <p>16 MR. CADIGAN: Yes, okay.</p> <p>17 MR. HARNISCH: Or maybe not.</p> <p>18 MR. CADIGAN: Okay.</p> <p>19 MR. HARNISCH: Anyway, go ahead.</p> <p>20 MR. CADIGAN: So, on that basis, you are</p> <p>21 instructing her not to answer?</p> <p>22 MR. HARNISCH: I am still instructing her</p> <p>23 not to answer. You can ask the question, as</p> <p>24 we have done before, did conversations</p> <p>25 happen or something like that and she will</p> | <p>1 notice...the media article by Kik that they</p> <p>2 were going public. So, it would have been</p> <p>3 around...on or around September 11th. And</p> <p>4 then the next communication I don't know the</p> <p>5 dates but would have been when it had become</p> <p>6 a potential, I guess, investigation by the</p> <p>7 SEC.</p> <p>8</p> <p>9 BY MR. CADIGAN:</p> <p>10 Q. And did you initiate the call to the</p> <p>11 SEC on September 11th?</p> <p>12 A. We would have initiated the call,</p> <p>13 yes.</p> <p>14 Q. What was the reason that you</p> <p>15 initiated the call?</p> <p>16 MR. HARNISCH: I am going to direct you</p> <p>17 not to answer that.</p> <p>18</p> <p>19 BY MR. CADIGAN:</p> <p>20 Q. Have you provided any guidance or</p> <p>21 assistance to the SEC in its investigation of Kik?</p> <p>22 MR. HARNISCH: It is a "Yes" or a "No" or</p> <p>23 an "I don't know".</p> <p>24 THE DEPONENT: I don't know.</p> <p>25</p> |

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| <p style="text-align: right;">Page 151</p> <p>1 BY MR. CADIGAN:</p> <p>2 Q. Did you personally provide an</p> <p>3 interview to the SEC?</p> <p>4 A. An interview?</p> <p>5 Q. Yes. Did you talk to the SEC in</p> <p>6 connection with this investigation of this matter?</p> <p>7 A. As I said, there was a call after</p> <p>8 once the investigation had started. That I recall.</p> <p>9 Q. And...</p> <p>10 A. It wasn't an interview. I wouldn't</p> <p>11 call it an interview.</p> <p>12 Q. Did they go over the various facts</p> <p>13 and timeline of your communications with Kin?</p> <p>14 MR. SCHLEGELMILCH: Objection.</p> <p>15 MR. HARNISCH: Just say "Yes" or "No" or</p> <p>16 "I don't recall".</p> <p>17 THE DEPONENT: I mean, they asked about</p> <p>18 Kik, yes. That I recall.</p> <p>19</p> <p>20 BY MR. CADIGAN:</p> <p>21 Q. But did you provide them with dates,</p> <p>22 times describing your communications with Kik?</p> <p>23 MR. HARNISCH: Okay, I am going to direct</p> <p>24 her not to answer.</p> <p>25 MR. SCHLEGELMILCH: I'll object for the</p> | <p style="text-align: right;">Page 153</p> <p>1 A. I believe there was two people from</p> <p>2 our enforcement branch.</p> <p>3 Q. Do you know whether they took notes</p> <p>4 of that discussion?</p> <p>5 A. I don't know.</p> <p>6 Q. Who were those people from the</p> <p>7 enforcement branch?</p> <p>8 A. I would have to go back to my notes.</p> <p>9 I want to say Noulla Antoniou is one and I don't</p> <p>10 recall the other person.</p> <p>11 Q. When you say notes, did you take</p> <p>12 notes of that discussion?</p> <p>13 A. No. I think I previously answered</p> <p>14 that I didn't take notes on that discussion.</p> <p>15 Q. You indicate you would have to go</p> <p>16 back and check your notes. What notes are you</p> <p>17 referring to?</p> <p>18 A. No, I meant, like, the calendar</p> <p>19 invite. I don't know. I don't recall who was there.</p> <p>20 Q. On September 11th, who did you speak</p> <p>21 with at the SEC?</p> <p>22 MR. HARNISCH: You can answer that.</p> <p>23 THE DEPONENT: Amy Starr. Valerie</p> <p>24 Szczepanik. There was someone else from</p> <p>25 Amy's group, I think Amy's corporate</p> |
| <p style="text-align: right;">Page 152</p> <p>1 record.</p> <p>2 MR. CADIGAN: What's that?</p> <p>3 MR. SCHLEGELMILCH: I am objecting for</p> <p>4 the record.</p> <p>5</p> <p>6 BY MR. CADIGAN:</p> <p>7 Q. Did you keep any notes of your</p> <p>8 discussions with the SEC?</p> <p>9 A. No, I have no notes.</p> <p>10 Q. Was anyone else there with you when</p> <p>11 you were talking with the SEC?</p> <p>12 A. Yes.</p> <p>13 Q. Who else was there?</p> <p>14 A. Which meeting are we talking about,</p> <p>15 though?</p> <p>16 Q. On September 11th.</p> <p>17 A. On September 11th, who was with me?</p> <p>18 Q. Yes. From the OSC.</p> <p>19 A. I don't recall from the OSC.</p> <p>20 Q. Okay, and then you said there was a</p> <p>21 subsequent discussion you had with the SEC; is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And who was with you from the</p> <p>25 OSC on that one?</p> | <p style="text-align: right;">Page 154</p> <p>1 finance. And I believe Michael Coco from</p> <p>2 international.</p> <p>3</p> <p>4 BY MR. CADIGAN:</p> <p>5 Q. And...</p> <p>6 A. I think the other...sorry, in Amy's</p> <p>7 group it was Cindy. I don't remember the last name.</p> <p>8 Q. And how long did that discussion</p> <p>9 last?</p> <p>10 A. Half an hour to 45.</p> <p>11 Q. And what was the topic of that</p> <p>12 discussion?</p> <p>13 MR. HARNISCH: I am going to direct you</p> <p>14 not to answer beyond Kik. I am presuming it</p> <p>15 is Kik.</p> <p>16 THE DEPONENT: Oh. Okay, on that one</p> <p>17 specifically, I asked whether Kik had</p> <p>18 approached the SEC.</p> <p>19</p> <p>20 BY MR. CADIGAN:</p> <p>21 Q. And what were you told?</p> <p>22 MR. HARNISCH: No. I am directing Pat no</p> <p>23 to answer.</p> <p>24 MR. SCHLEGELMILCH: I will also add an</p> <p>25 objection.</p> |

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| <p>1</p> <p>2 BY MR. CADIGAN:</p> <p>3 Q. And in your subsequent call with the</p> <p>4 SEC, who was on the call from the SEC?</p> <p>5 A. I don't recall the names.</p> <p>6 Q. Do you recall whether they were from</p> <p>7 the division of enforcement or division of corporate</p> <p>8 finance or some other division at the SEC?</p> <p>9 A. I believe one person was from</p> <p>10 enforcement.</p> <p>11 Q. And how long did that call last?</p> <p>12 A. Again, probably half an hour to 45.</p> <p>13 Q. And when did that call take place?</p> <p>14 A. I don't recall the date.</p> <p>15 Q. Was that also in the fall of 2017?</p> <p>16 A. I actually think it was closer to</p> <p>17 winter.</p> <p>18 Q. Winter, 2017? Did you have any other</p> <p>19 discussions with the SEC staff related to Kik?</p> <p>20 A. No.</p> <p>21 Q. Did you provide any documents to the</p> <p>22 SEC?</p> <p>23 A. No. Me personally?</p> <p>24 Q. Yes.</p> <p>25 A. No.</p> | <p>1 A. Prior to the filing? No.</p> <p>2 Q. Okay. Have you had any discussions</p> <p>3 with the...did you have any discussions with the SEC</p> <p>4 regarding the filing of its complaint?</p> <p>5 A. I am going to ask you to repeat that</p> <p>6 again.</p> <p>7 Q. Yes, did you have any discussions</p> <p>8 with the SEC regarding the filing of its complaint?</p> <p>9 A. Regarding the filing of its</p> <p>10 complaint. No, not on that specific issue, no.</p> <p>11 Q. Again, as you said, the only two</p> <p>12 discussions you have had with the SEC were the two</p> <p>13 you just mentioned?</p> <p>14 A. Right. One, after the media article</p> <p>15 to understand whether Kik had approached the SEC.</p> <p>16 And then the following was later once the SEC had</p> <p>17 started an investigation.</p> <p>18 Q. When you reached out to the SEC, how</p> <p>19 did you decide who to reach out to?</p> <p>20 A. For which call?</p> <p>21 Q. For the call on September 11th.</p> <p>22 A. The call on September 11th? We</p> <p>23 typically allow the SEC to determine that. But I</p> <p>24 also knew that Amy Starr and Valerie were involved in</p> <p>25 these issues.</p> |
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| <p>1 Q. Do you know whether any...if any</p> <p>2 documents were provided by the OSC to the SEC?</p> <p>3 MR. HARNISCH: I am going to direct you</p> <p>4 not to answer.</p> <p>5</p> <p>6 BY MR. CADIGAN:</p> <p>7 Q. Do you know whether the notes of your</p> <p>8 meetings and your communications with Kik were</p> <p>9 provided to the SEC?</p> <p>10 MR. HARNISCH: I will also direct you not</p> <p>11 to answer.</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. Do you know what, if any, documents</p> <p>15 were provided to the SEC by the OSC?</p> <p>16 A. I don't...</p> <p>17 MR. HARNISCH: You can say "Yes" or "No"</p> <p>18 or "I don't know".</p> <p>19 THE DEPONENT: I don't know.</p> <p>20</p> <p>21 BY MR. CADIGAN:</p> <p>22 Q. Did you have any...did you review any</p> <p>23 part of the SEC's complaint prior to its filing?</p> <p>24 A. Prior to this?</p> <p>25 Q. Prior to its filing.</p> | <p>1 Q. And in the subsequent call, did you</p> <p>2 reach out to the SEC or did the SEC reach out to you?</p> <p>3 A. I don't know the answer to that.</p> <p>4 Q. You don't know whether you reached</p> <p>5 out to them?</p> <p>6 A. No, no, I didn't. I don't know who</p> <p>7 did.</p> <p>8 Q. Did you have any...did you ever</p> <p>9 communicate with the SEC by e-mail?</p> <p>10 A. Me personally?</p> <p>11 Q. Yes.</p> <p>12 A. I don't recall an e-mail to the SEC.</p> <p>13 Q. Have you been on any chains with e-</p> <p>14 mails to the SEC relating to Kik?</p> <p>15 A. With the SEC? I don't recall any e-</p> <p>16 mails that I would have been involved with the SEC</p> <p>17 and Kik.</p> <p>18 Q. Have you spoken to the SEC since it</p> <p>19 has filed its complaint in this matter?</p> <p>20 A. Since it has filed its complaint?</p> <p>21 When was the complaint filed?</p> <p>22 Q. The complaint was filed in mid...June</p> <p>23 of last year. June, 2019. Sorry.</p> <p>24 A. I don't recall.</p> <p>25 Q. You don't recall whether you have had</p> |

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| <p>1 any discussions in the last several months?</p> <p>2 A. I don't believe I have but I...I</p> <p>3 mean, I don't...I don't recall.</p> <p>4 Q. Did you have any discussions with the</p> <p>5 SEC related to your testimony today?</p> <p>6 A. Discussions with the SEC related to</p> <p>7 my testimony? I mean, I am going to ask you to</p> <p>8 rephrase that question.</p> <p>9 Q. Yes. I mean, have you had any</p> <p>10 discussions with the SEC regarding your providing a</p> <p>11 deposition in this matter?</p> <p>12 A. On the call with the SEC, I was</p> <p>13 asked...</p> <p>14 MR. HARNISCH: No. No. I am not going</p> <p>15 to have you talk about substance and</p> <p>16 communications with the SEC but I think...</p> <p>17 THE DEPONENT: I was asked about Kik as</p> <p>18 well, I was going to say.</p> <p>19 MR. HARNISCH: Oh. Sorry.</p> <p>20</p> <p>21 BY MR. CADIGAN:</p> <p>22 Q. And when was that?</p> <p>23 A. I have explained, there was one call</p> <p>24 right after the media article.</p> <p>25 Q. Yes?</p> | <p>1 that.</p> <p>2 Q. So, to your knowledge, did you</p> <p>3 provide an interview to the SEC regarding Kik?</p> <p>4 A. I think I answered that. I am not</p> <p>5 sure what you mean by an interview. We did have a</p> <p>6 discussion about our interactions with Kik.</p> <p>7 MR. CADIGAN: Can we have this marked as</p> <p>8 Exhibit 122?</p> <p>9</p> <p>10 --- EXHIBIT NO. 122: Letter dated August 28, 2017 to</p> <p>11 Finance Ministers from Manie Eagar</p> <p>12</p> <p>13 BY MR. CADIGAN:</p> <p>14 Q. I am handing you what has been marked</p> <p>15 as Exhibit 122. For the record, it is an August</p> <p>16 28th, 2017 letter to Finance Ministers from Manie</p> <p>17 Eagar, chairman of the Blockchain Association of</p> <p>18 Canada. It is Bates stamped KIK 117898 and 117900.</p> <p>19 Have you seen this document before?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. It is a letter from Manie Eagar to</p> <p>23 the Finance Ministers.</p> <p>24 Q. And who are the Finance Ministers?</p> <p>25 What is their role?</p> |
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| <p>1 A. And that was to understand whether</p> <p>2 Kik had approached the SEC. That was...we needed to</p> <p>3 understand whether they had even talked to the SEC.</p> <p>4 And then many months later, I don't recall the date,</p> <p>5 there was a discussion around our interaction with</p> <p>6 Kik and that was it. That was the...</p> <p>7 Q. And I believe you said that was</p> <p>8 towards the winter of 2017?</p> <p>9 A. I believe it was then, yes.</p> <p>10 Q. And since the lawsuit has been filed</p> <p>11 in this matter, in June 2019, I am asking whether you</p> <p>12 have had any communications with the SEC regarding</p> <p>13 your deposition, your providing a deposition in this</p> <p>14 matter.</p> <p>15 A. I don't believe so. I don't recall</p> <p>16 any calls after that.</p> <p>17 Q. Have you been following the lawsuit?</p> <p>18 A. No. I have many more things to do.</p> <p>19 Q. Did you have any communications with</p> <p>20 the SEC when the DAO report was published?</p> <p>21 A. No.</p> <p>22 Q. Did you have any communications with</p> <p>23 the SEC regarding the August 24th, 2017 CSA staff</p> <p>24 notice?</p> <p>25 A. No, there would be no reason for</p> | <p>1 A. I don't think I am an expert on that,</p> <p>2 but effectively they are responsible for the Ministry</p> <p>3 of Finance in their provinces. Bill Morneau would be</p> <p>4 the federal Finance Minister.</p> <p>5 Q. And this was a letter written after</p> <p>6 the August 24th, 2017 CSA notice; is that right?</p> <p>7 A. It appears to be.</p> <p>8 Q. And in it, if you look at the second</p> <p>9 page, is a statement:</p> <p>10 "...To date, the OSC has not published any</p> <p>11 specific guidance on the characteristics of</p> <p>12 a digital token sold through a crowd sale</p> <p>13 that would be considered a security under</p> <p>14 Ontario securities laws..."</p> <p>15 Is that right?</p> <p>16 A. No, that is not right.</p> <p>17 Q. No, I mean, is that what that states?</p> <p>18 A. That is what it says.</p> <p>19 Q. I mean, you disagree with that</p> <p>20 position but that is what it states there?</p> <p>21 A. Right.</p> <p>22 Q. And I think that you had indicated</p> <p>23 that you understood that the only...rather, let me</p> <p>24 just say, beyond this letter, were you aware of any</p> <p>25 other criticism regarding the guidance that had been</p> |

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| <p>1 provided regarding cryptocurrencies in Ontario?</p> <p>2 A. I have heard comments from various</p> <p>3 parties who are in the crypto asset space that do not</p> <p>4 like the regulatory framework that would apply. That</p> <p>5 they would prefer that either regulation doesn't</p> <p>6 apply or that securities regulation doesn't apply.</p> <p>7 Q. And where have you seen those</p> <p>8 comments?</p> <p>9 A. That is part of our role. When we do</p> <p>10 outreach to the Fintech community, we provide direct</p> <p>11 support to these businesses. These are just the</p> <p>12 comments we have heard.</p> <p>13 Q. And it is true, isn't it, that when</p> <p>14 the CSA...when CSA provided its August 24th notice,</p> <p>15 it did not put out that guidance for public comment</p> <p>16 before releasing it; right?</p> <p>17 A. It is not required to.</p> <p>18 Q. But it did not do so, right?</p> <p>19 A. Right.</p> <p>20 MR. CADIGAN: Could we have this marked</p> <p>21 as Exhibit 123.</p> <p>22</p> <p>23 --- EXHIBIT NO. 123: Article dated September 18, 2017 by</p> <p>24 Ross McKee, Chris Hewat and Liam</p> <p>25 Churchill entitled "Industry Responds</p> | <p>1 Q. Are you denying that it is on there?</p> <p>2 A. I am not denying, I just am not aware</p> <p>3 of it.</p> <p>4 Q. Okay. What did you do to prepare for</p> <p>5 the deposition today?</p> <p>6 A. I feel like I answered that question</p> <p>7 but I reviewed the documents and the e-mails that</p> <p>8 were the direct communications between me and Kik or</p> <p>9 its counsel.</p> <p>10 Q. And who was there when you prepared?</p> <p>11 A. Who was there when I prepared?</p> <p>12 Q. Yes.</p> <p>13 A. I prepared with my legal counsel.</p> <p>14 Q. And who was that? Mr. Harnisch?</p> <p>15 A. Yes, Mr. Harnisch. And Yvonne</p> <p>16 Chisholm.</p> <p>17 Q. And when did you prepare?</p> <p>18 A. Yesterday.</p> <p>19 Q. And how long did you meet with them</p> <p>20 to prepare?</p> <p>21 A. A couple hours.</p> <p>22 Q. And is the OSC paying for your legal</p> <p>23 counsel?</p> <p>24 A. I don't have...I don't know the</p> <p>25 answer to that. I assume so but I don't know the</p> |
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| <p>1 to CSA Guidance on Cryptocurrency</p> <p>2 Offerings"</p> <p>3</p> <p>4 BY MR. CADIGAN:</p> <p>5 Q. I am handing you what has been marked</p> <p>6 as Exhibit 123. This is an article written by Ross</p> <p>7 McKee and others entitled...dated September 18, 2017</p> <p>8 entitled "Industry Responds to CSA Guidance on</p> <p>9 Cryptocurrency Offerings", is that right?</p> <p>10 A. That is what it says.</p> <p>11 Q. And under "Industry Responds" he</p> <p>12 writes:</p> <p>13 "...Fintech organizations and companies are</p> <p>14 concerned the Staff Notice did not provide</p> <p>15 specific guidance on the characteristics of</p> <p>16 a cryptocurrency that would result in it</p> <p>17 being considered a security..."</p> <p>18 Is that what he wrote?</p> <p>19 A. That is what he wrote.</p> <p>20 Q. And isn't it true that this article</p> <p>21 is linked on the OSC website?</p> <p>22 A. This article is linked on the OSC</p> <p>23 website?</p> <p>24 Q. Yes.</p> <p>25 A. I am not aware of that.</p> | <p>1 answer to that.</p> <p>2 Q. Is it your present intention to</p> <p>3 testify at the trial in this matter if asked to do</p> <p>4 so?</p> <p>5 MR. HARNISCH: Objection. I would direct</p> <p>6 you not to answer that. Those issues will</p> <p>7 be handled in consultation with counsel.</p> <p>8</p> <p>9 BY MR. CADIGAN:</p> <p>10 Q. Have you had any discussions with the</p> <p>11 SEC regarding whether you would so testify?</p> <p>12 A. Have I had discussions?</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 Q. Before we just leave that, in terms</p> <p>16 of the later discussion with the SEC regarding...in</p> <p>17 winter of 2017, I just want to make sure that I am</p> <p>18 clear, if I were to ask about the details of that</p> <p>19 discussion, I take it you would instruct her not to</p> <p>20 answer?</p> <p>21 MR. HARNISCH: That is a fair assumption.</p> <p>22 MR. CADIGAN: I have no further</p> <p>23 questions.</p> <p>24</p> <p>25 EXAMINATION BY MR. SCHLEGELMILCH:</p> |

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| <p>1 Q. Good afternoon, Ms. Chaukos. As you</p> <p>2 know by now, my name is Stephan Schlegelmilch and I</p> <p>3 am one of the attorneys for the SEC in this action.</p> <p>4 I have got just a few questions, actually now very</p> <p>5 few questions, but I do apologize because they are</p> <p>6 likely going to overlap a little bit with what Kik's</p> <p>7 counsel covered with you earlier today.</p> <p>8 Just by way of ground rules, I talk quickly.</p> <p>9 If I ask a question that doesn't make any sense, I</p> <p>10 will do my best to rephrase it. Just let me know.</p> <p>11 And when thinking about your answers and when</p> <p>12 answering my questions, I guess my overall caution is</p> <p>13 that I am not seeking privileged information. I am</p> <p>14 not seeking confidential information. And I am not</p> <p>15 trying to ask you questions that would cause you to</p> <p>16 be, like, an expert on the law in any way. So, I am</p> <p>17 not seeking that information.</p> <p>18 A. Okay.</p> <p>19 Q. So, what I would like to do first is</p> <p>20 to have you look at the press release that the OSC</p> <p>21 put out in March of 2018. There it is right there.</p> <p>22 March of 2017, I'm sorry. How did the OSC</p> <p>23 disseminate this press release? How did it push it</p> <p>24 out to the market?</p> <p>25 A. It was a media release, so it would</p> | <p>1 this is out of bounds I will withdraw the question,</p> <p>2 but I am looking for, sort of, an order of magnitude.</p> <p>3 I am looking for from the time this media release was</p> <p>4 released in March of 2017, can you tell me</p> <p>5 approximately how many would-be issuers of tokens</p> <p>6 contacted you until, let's say, August of 2017? That</p> <p>7 five month period.</p> <p>8 A. I don't know the exact numbers but if</p> <p>9 I were to estimate, I would say it is probably less</p> <p>10 than 20.</p> <p>11 Q. But Kik, towards July, was one of</p> <p>12 those potential offerors of digital tokens?</p> <p>13 A. Yes.</p> <p>14 Q. That contacted the OSC?</p> <p>15 A. Right.</p> <p>16 MR. SCHLEGELMILCH: Let's go off the</p> <p>17 record.</p> <p>18</p> <p>19 --- DISCUSSION OFF THE RECORD</p> <p>20</p> <p>21 BY MR. SCHLEGELMILCH:</p> <p>22 Q. Now, I know that from your prior</p> <p>23 testimony you met in person with Kik and</p> <p>24 representatives of Kik and their legal counsel</p> <p>25 in...on August 14th of 2017; is that correct?</p> |
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| <p>1 have been done through our communications department.</p> <p>2 Q. So, was it put on the Internet?</p> <p>3 A. Yes.</p> <p>4 Q. And did it receive coverage in the</p> <p>5 press?</p> <p>6 A. Yes, I believe so.</p> <p>7 Q. Okay. And is it fair to say that in</p> <p>8 summary the OSC when issuing this media release was</p> <p>9 warning would-be issuers of digital tokens that the</p> <p>10 securities laws may apply to the issuance of the</p> <p>11 digital tokens?</p> <p>12 A. That is fair.</p> <p>13 Q. And if you look on the second page of</p> <p>14 the release, did the OSC invite would-be issuers of</p> <p>15 digital tokens to contact the OSC regarding the token</p> <p>16 offering?</p> <p>17 A. Yes, that is the mandate of OSC</p> <p>18 LaunchPad.</p> <p>19 Q. And I think you have said earlier,</p> <p>20 and I am not asking for any specifics, that you</p> <p>21 actually got a fair number of queries from digital</p> <p>22 token offerors?</p> <p>23 A. Yes. Media inquiries but also from</p> <p>24 businesses themselves.</p> <p>25 Q. If this is...if your counsel says</p> | <p>1 A. That is correct.</p> <p>2 Q. I think you said but I want to make</p> <p>3 sure that I understood this that Kik had U.S. counsel</p> <p>4 present?</p> <p>5 A. Yes.</p> <p>6 Q. Were they in person or were they</p> <p>7 telephonic?</p> <p>8 A. They were on a conference call.</p> <p>9 There was two U.S. counsel.</p> <p>10 Q. Did they speak?</p> <p>11 A. They did.</p> <p>12 Q. Okay. What do you...if you can</p> <p>13 recall the subject matter, what was it that they were</p> <p>14 speaking about when they spoke?</p> <p>15 A. When they spoke, it was about how</p> <p>16 under U.S. law they thought that the token offering</p> <p>17 was not a security.</p> <p>18 Q. And when they talked about it, were</p> <p>19 they talking about it in the context of the Howey</p> <p>20 Test?</p> <p>21 A. Yes.</p> <p>22 Q. And just so the record is clear, at</p> <p>23 the highest of high levels, what is the Howey Test?</p> <p>24 MR. CADIGAN: Objection.</p> <p>25 MR. SCHLEGELMILCH: Just so that we are</p> |

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| <p>1 all on the same page with respect to</p> <p>2 definitions.</p> <p>3 MR. CADIGAN: Objection for the record.</p> <p>4 THE DEPONENT: Howey Test is a case in</p> <p>5 the U.S. that sets out four prongs of a test</p> <p>6 to determine whether something is an</p> <p>7 investment contract.</p> <p>8 MR. SCHLEGELMILCH: I see.</p> <p>9</p> <p>10 BY MR. SCHLEGELMILCH:</p> <p>11 Q. And so when Kik's United States</p> <p>12 counsel spoke during this meeting telephonically,</p> <p>13 that was the topic that they were talking about, was</p> <p>14 the Howey Test; is that correct?</p> <p>15 A. Yes. They had done, kind of, a legal</p> <p>16 analysis but Blakes had only issued the letter to us.</p> <p>17 Q. What can you tell me about the legal</p> <p>18 analysis that you just mentioned?</p> <p>19 A. Other than what they said on the</p> <p>20 call, we never saw it.</p> <p>21 Q. And so on the call, did they indicate</p> <p>22 that a legal analysis existed but they weren't</p> <p>23 willing to share it?</p> <p>24 A. That their legal analysis indicated</p> <p>25 that it wasn't a security based on a couple...at</p> | <p>1 A. Yes.</p> <p>2 Q. Is this the test for an investment</p> <p>3 contract in Canada?</p> <p>4 A. I mean, it is summarizing but it is</p> <p>5 the four pronged test that we...that is set out in</p> <p>6 Pacific Coin...Coast Coin.</p> <p>7 Q. And I think your testimony is that it</p> <p>8 is the same test that is set forth in Howey?</p> <p>9 MR. HARNISCH: Objection.</p> <p>10 THE DEPONENT: It broadens...my</p> <p>11 understanding is that it broadens Howey...on</p> <p>12 prong number four, I believe. And there may</p> <p>13 be elements even in two, but to come</p> <p>14 significantly from the efforts of others, I</p> <p>15 believe Howey says to come solely or</p> <p>16 primarily from the efforts of others.</p> <p>17 MR. SCHLEGELMILCH: Okay.</p> <p>18</p> <p>19 BY MR. SCHLEGELMILCH:</p> <p>20 Q. And if you look on the first page...</p> <p>21 A. Of the notice?</p> <p>22 Q. ...of the notice. Do you see</p> <p>23 footnote 4?</p> <p>24 A. Yes?</p> <p>25 Q. The first URL there, the first</p> |
| Page 172 | Page 174 |
| <p>1 least a couple prongs of Howey.</p> <p>2 Q. Okay. Do you have in front of you</p> <p>3 the...I think it is marked previously as 118. It is</p> <p>4 the CSA notice.</p> <p>5 A. Okay.</p> <p>6 Q. And I think your testimony was...and</p> <p>7 I am not trying to misstate it in any way, I am just</p> <p>8 trying to sort of reorient us to an earlier session</p> <p>9 of your deposition, I think your testimony was that</p> <p>10 even though this notice had not been issued, that you</p> <p>11 talked about the substance of this notice with Kik</p> <p>12 and its representatives during the August 14th</p> <p>13 meeting. Is that correct?</p> <p>14 A. We talked about the notice that it</p> <p>15 would be coming out and it would be addressing some</p> <p>16 of the same arguments that Kik was making in the</p> <p>17 meeting, yes...</p> <p>18 Q. And if you...</p> <p>19 A. ...and that we would forward it to</p> <p>20 them.</p> <p>21 Q. All right. I apologize. Would you</p> <p>22 look at the third page of the notice.</p> <p>23 A. The third page? Okay.</p> <p>24 Q. Yes. There is four numbered</p> <p>25 sentences.</p> | <p>1 website.</p> <p>2 A. Okay?</p> <p>3 Q. Is that the website for the United</p> <p>4 States Securities and Exchange Commission?</p> <p>5 A. I don't know the answer to that.</p> <p>6 Q. Okay. Nevertheless, the notice in</p> <p>7 the footnote encourages would-be registrants to check</p> <p>8 out one of those URLs; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. In your conversation with Kik...if</p> <p>11 you could turn to the third page, I think it might be</p> <p>12 helpful. In your conversations with Kik on August</p> <p>13 14th, did you talk about these four prongs?</p> <p>14 A. Some elements of the...not...not</p> <p>15 necessarily all of them but some of them, yes.</p> <p>16 Q. Okay, can you tell me to the best of</p> <p>17 your memory which prongs you discussed with Kik on</p> <p>18 August 14th?</p> <p>19 A. I remember distinctly the expectation</p> <p>20 of profit because they were thinking about profit in</p> <p>21 the way you do with traditional securities, does it</p> <p>22 provide dividends, you know, any kind of profit</p> <p>23 sharing and what the expectation of profit means.</p> <p>24 Q. And what did you or what did other</p> <p>25 people from the LaunchPad say in response to that?</p> |

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| <p>1 A. Well, it was actually something that</p> <p>2 we actually put into our notice. There are ways</p> <p>3 to...or expectation of profit with these token</p> <p>4 offerings. You can have an expectation of profit</p> <p>5 that is broader than what traditional securities have</p> <p>6 had. So, a lot of them do rewards or there is an</p> <p>7 increase in value. You know, in terms of promotional</p> <p>8 type activities.</p> <p>9 Q. Do you recall telling Kik during this</p> <p>10 meeting that it was the OSC's view that an increase</p> <p>11 in value or an increase in price in the token could</p> <p>12 lead to an expectation of profits?</p> <p>13 MR. HARNISCH: Objection.</p> <p>14 THE DEPONENT: Yes.</p> <p>15</p> <p>16 BY MR. SCHLEGELMILCH:</p> <p>17 Q. Can you provide any additional colour</p> <p>18 on what you told them during the meeting on that</p> <p>19 topic?</p> <p>20 A. No, I don't recall details. I recall</p> <p>21 that we had that discussion around that prong of the</p> <p>22 test.</p> <p>23 Q. Okay. Do you recall any discussion</p> <p>24 regarding the fourth prong of the test, to come</p> <p>25 significantly from the efforts of others?</p> | <p>1 MR. CADIGAN: Objection. I'm sorry.</p> <p>2 THE DEPONENT: Yes, I will put a caveat</p> <p>3 there, though. I find a lot of white papers</p> <p>4 overly promotional, so I typically rely on</p> <p>5 what the business tells us in the meeting.</p> <p>6</p> <p>7 BY MR. SCHLEGELMILCH:</p> <p>8 Q. And did Kik address that point during</p> <p>9 the meeting?</p> <p>10 A. Which point?</p> <p>11 Q. The point we were just talking about,</p> <p>12 that whether or not investors were looking to Kik to</p> <p>13 build out the ecosystem or to...</p> <p>14 A. I don't recall how they addressed it.</p> <p>15 Q. Okay, thank you. Do you recall a</p> <p>16 discussion with Kik regarding an investment of money?</p> <p>17 The first prong of...that is listed here in the CSA</p> <p>18 notice?</p> <p>19 A. I don't recall that.</p> <p>20 Q. Okay. And do you recall...and</p> <p>21 forgive me if you covered this with Mr. Cadigan, but</p> <p>22 do you recall a discussion regarding the common</p> <p>23 enterprise prong?</p> <p>24 A. I don't recall the discussion on the</p> <p>25 common enterprise.</p> |
| Page 176 | Page 178 |
| <p>1 A. That would have been...that</p> <p>2 discussion...what I do recall on that is the</p> <p>3 distinguishing Howey to Pacific Coin.</p> <p>4 Q. Okay?</p> <p>5 A. And at the same time...and I don't</p> <p>6 know who on the Kik team made the argument. You</p> <p>7 know, because miners are the ones that are, kind of,</p> <p>8 building the DLT or the blockchain technology, they</p> <p>9 are a big part of it, that somehow it is</p> <p>10 decentralized and so therefore you are not relying on</p> <p>11 the efforts of the Kik team. So that was the</p> <p>12 discussion around that.</p> <p>13 Q. Do you recall your or anyone else</p> <p>14 from the OSC LaunchPad's response to that argument</p> <p>15 that Kik was making?</p> <p>16 A. We were making the argument that</p> <p>17 investors are investing money, relying on the</p> <p>18 representations by the Kik team and what platform</p> <p>19 they would deliver. They were relying on the Kik</p> <p>20 team to be developing that platform.</p> <p>21 Q. Okay. Is it fair to say that your</p> <p>22 read of the white paper and the materials that you</p> <p>23 reviewed in advance of the meeting suggested to you</p> <p>24 that investors were looking to Kik to build out the</p> <p>25 platform, the ecosystem?</p> | <p>1 Q. But you do recall a discussion</p> <p>2 regarding prongs three and four?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. During the meeting with Kik on</p> <p>5 August 14th, do you recall a discussion of the DAO</p> <p>6 report?</p> <p>7 A. I remember, and I think I said this</p> <p>8 previously, that it came up and they distinguished</p> <p>9 DAO...the Kik offering with DAO because of the profit</p> <p>10 sharing element.</p> <p>11 Q. And do you recall responding to that</p> <p>12 argument?</p> <p>13 A. I don't recall the detail but we</p> <p>14 would have responded because that goes to the</p> <p>15 expectation of profit.</p> <p>16 Q. Okay. And we have already covered</p> <p>17 that.</p> <p>18 A. M'hmm.</p> <p>19 Q. Okay. So I don't need to...</p> <p>20 A. Yes.</p> <p>21 Q. ...do it all over again. I have</p> <p>22 brought exhibits. I should mark them. I brought</p> <p>23 them all the way here.</p> <p>24 MR. HARNISCH: As long as they are here,</p> <p>25 right?</p> |

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| <p>1 MR. SCHLEGELMILCH: As long as they are</p> <p>2 here. Let me hand you what we will mark as</p> <p>3 Exhibit 124.</p> <p>4</p> <p>5 --- EXHIBIT NO. 124: E-mail chain ending September 7, 2017</p> <p>6 between Mr. McKee and Ms. Chaukos</p> <p>7</p> <p>8 BY MR. SCHLEGELMILCH:</p> <p>9 Q. I am handing you what has now been</p> <p>10 marked as Exhibit 124.</p> <p>11 A. Okay.</p> <p>12 Q. And just for the record, it is an e-</p> <p>13 mail exchange that is from Mr. McKee to you</p> <p>14 dated...the most recent in time e-mail is September</p> <p>15 7, 2017 at 7:01 p.m. and the Bates numbers on the</p> <p>16 exhibit are SEC OSC-E 0000083 through 90.</p> <p>17 A. Okay.</p> <p>18 Q. And what I'd like to do is to ask you</p> <p>19 to look at the page that ends in 86. Specifically,</p> <p>20 an e-mail from Mr. McKee to you dated September 5,</p> <p>21 2017.</p> <p>22 A. 6:41 p.m.?</p> <p>23 Q. Yes, ma'am.</p> <p>24 A. Okay.</p> <p>25 Q. Just take a minute to read this over</p> | <p>1</p> <p>2 BY MR. SCHLEGELMILCH:</p> <p>3 Q. Now, why do you say that?</p> <p>4 A. Because he is offering either what he</p> <p>5 called a no-action or exemptive relief application,</p> <p>6 which is what we had proposed initially. Or, he is</p> <p>7 saying he is going to...I think this is the e-mail</p> <p>8 where he says he will do no Canadians under what we</p> <p>9 call the distributions outside Canada.</p> <p>10 Q. Okay. I don't want to interrupt your</p> <p>11 reading. I was going to move on to a different</p> <p>12 topic.</p> <p>13 A. No, go ahead.</p> <p>14 Q. So, if you could look at...I did not</p> <p>15 mark the exhibit number down but it is the November</p> <p>16 2nd, 2017 letter from Mr. McKee to Mr. Loke.</p> <p>17 A. Okay.</p> <p>18 Q. It is right there. It was marked</p> <p>19 previously as Exhibit 58 in a deposition. I just</p> <p>20 want to focus on one sentence of Mr. McKee's letter</p> <p>21 on the first page. Mr. McKee writes:</p> <p>22 "...In fact, the first time the OSC staff</p> <p>23 definitively communicated a position that</p> <p>24 the ITD..."</p> <p>25 And I think that is the issue of tokens:</p> |
| Page 180 | Page 182 |
| <p>1 but my question will be, is Mr. McKee proposing an</p> <p>2 exemption from registration?</p> <p>3 MR. CADIGAN: Objection. Leading.</p> <p>4 THE DEPONENT: He is proposing a no-</p> <p>5 action letter.</p> <p>6 MR. SCHLEGELMILCH: Okay.</p> <p>7 THE DEPONENT: Which Mr. McKee knows we</p> <p>8 cannot do in Ontario.</p> <p>9</p> <p>10 BY MR. SCHLEGELMILCH:</p> <p>11 Q. Why do you say that, that you can't</p> <p>12 do that in Ontario?</p> <p>13 A. Because we are not allowed to give</p> <p>14 blanket type orders or no-action letters. We</p> <p>15 normally do this type of relief through an exemptive</p> <p>16 relief application and a decision.</p> <p>17 Q. Okay. The fact that Mr. McKee is</p> <p>18 asking for a no-action letter, did that cause you to</p> <p>19 understand that Mr. McKee understood that the</p> <p>20 OSC...that the LaunchPad had determined that the Kin</p> <p>21 that Kik was going to offer in September of 2017 was</p> <p>22 a security?</p> <p>23 MR. CADIGAN: Objection.</p> <p>24 THE DEPONENT: I actually think he is</p> <p>25 conceding that it is a security.</p> | <p>1 "...constituted an offering of securities</p> <p>2 was in the telephone call to me from Ms.</p> <p>3 Chaukos on September 5th, shortly before the</p> <p>4 scheduled launch date..."</p> <p>5 Based on your recollection of events, is that</p> <p>6 accurate?</p> <p>7 A. No.</p> <p>8 Q. How is it inaccurate?</p> <p>9 A. I don't know how he means</p> <p>10 "definitively". But we had communicated our position</p> <p>11 throughout. That was the reason for meeting with Kik</p> <p>12 in the first instance, because if we agreed with the</p> <p>13 legal analysis there was no need to meet with Kik and</p> <p>14 that is also the reason why we were asking about</p> <p>15 investor disclosures. Every time there was a media</p> <p>16 article, we followed up right away because we did at</p> <p>17 that time believe and...and to this day believe that</p> <p>18 it was an offering of securities.</p> <p>19 Q. But is it fair to say that no later</p> <p>20 than September 5th the OSC had definitively</p> <p>21 communicated to Kik that the token was a security?</p> <p>22 A. I am going to ask you to rephrase</p> <p>23 that.</p> <p>24 Q. Yes, it is a lousy question. Is it</p> <p>25 fair to say that at least by September 5th, the date</p> |

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| <p style="text-align: right;">Page 183</p> <p>1 indicated in Mr. McKee's letter, that at least by</p> <p>2 that date the OSC had made it crystal clear to Kik</p> <p>3 that the offering of the Kin token was a securities</p> <p>4 offering?</p> <p>5 MR. CADIGAN: Objection.</p> <p>6 THE DEPONENT: Okay, when you say "at</p> <p>7 least", I am saying there is no way after</p> <p>8 September 5th they could have argued that we</p> <p>9 hadn't communicated it was a security. Yes.</p> <p>10</p> <p>11 BY MR. SCHLEGELMILCH:</p> <p>12 Q. And, in fact, your testimony...I am</p> <p>13 not trying to misstate it. Your testimony it was</p> <p>14 actually much earlier than that; is that correct?</p> <p>15 A. Yes.</p> <p>16 MR. SCHLEGELMILCH: Let me mark another</p> <p>17 exhibit. Thank you. Let me hand you what</p> <p>18 has been marked as Exhibit 125.</p> <p>19</p> <p>20 --- EXHIBIT NO. 125: Article dated September 7, 2017 by</p> <p>21 Ted Livingston entitled "Canadian</p> <p>22 Residents Excluded from Next Week's</p> <p>23 Kin TDE"</p> <p>24</p> <p>25 BY MR. SCHLEGELMILCH:</p> | <p style="text-align: right;">Page 185</p> <p>1 were going to satisfy registration and prospectus</p> <p>2 requirements indicated that we were very clear that</p> <p>3 it was a security and they needed to comply with</p> <p>4 regulatory requirements and that we were open to</p> <p>5 exemptive relief. We understood this was a novel</p> <p>6 area where, you know, not all the regulations may</p> <p>7 make sense for a Fintech type business. But we were</p> <p>8 open to exemptive relief. And we never heard back on</p> <p>9 the exemptive relief.</p> <p>10 Q. In all of your conversations with Mr.</p> <p>11 McKee and with other representatives of Kik, was</p> <p>12 there ever a conversation about whether Kik had</p> <p>13 contacted the SEC like they had contacted the OSC</p> <p>14 LaunchPad?</p> <p>15 A. I asked that question, I think, on</p> <p>16 the August 14th meeting.</p> <p>17 Q. And what was their response?</p> <p>18 A. That the SEC didn't have a LaunchPad</p> <p>19 the way we have a LaunchPad. They didn't have a team</p> <p>20 or a unit that they could talk to.</p> <p>21 Q. And that was the reason Kik gave for</p> <p>22 not contacting the SEC?</p> <p>23 A. That is my recollection. And I don't</p> <p>24 know if it was Ross McKee or Cobley that responded to</p> <p>25 that question.</p> |
| <p style="text-align: right;">Page 184</p> <p>1 Q. I just want to ask you one question</p> <p>2 or a couple questions about this, I guess. Have you</p> <p>3 ever seen this before?</p> <p>4 A. I don't think I have seen it in this</p> <p>5 format. I think it might be a blog that came from</p> <p>6 Ted Livingston, so I probably would have seen it</p> <p>7 before, yes, in that format.</p> <p>8 Q. Let me just ask you about one thing</p> <p>9 that Mr. Livingston wrote in this Medium post. Mr.</p> <p>10 Livingston wrote:</p> <p>11 "...Despite our best efforts to work with</p> <p>12 the OSC, they have failed to give us clear</p> <p>13 direction on when Canadian securities law</p> <p>14 will or, more importantly, will not</p> <p>15 apply..."</p> <p>16 Based on your memory, is that statement accurate?</p> <p>17 A. No, it is not accurate.</p> <p>18 Q. How so?</p> <p>19 A. We met with them from August 14th.</p> <p>20 Every time there was an article in the paper, we</p> <p>21 followed up. We, in fact, understood the public</p> <p>22 offering was going to happen much later. But every</p> <p>23 time we saw an article, I followed up with Ross McKee</p> <p>24 and I think all of the discussions, whether we are</p> <p>25 talking about resale, investor disclosure, how they</p> | <p style="text-align: right;">Page 186</p> <p>1 MR. SCHLEGELMILCH: Okay. Can we go off</p> <p>2 the record?</p> <p>3</p> <p>4 --- DISCUSSION OFF THE RECORD</p> <p>5</p> <p>6 MR. SCHLEGELMILCH: Subject to asking</p> <p>7 further questions after representatives of</p> <p>8 Kik ask more questions, if they do, we have</p> <p>9 no further questions at this time. Thank</p> <p>10 you very much.</p> <p>11 MR. CADIGAN: I just have a very quick</p> <p>12 follow-up and I hope to be quick. I can ask</p> <p>13 them from down here.</p> <p>14</p> <p>15 CONTINUED EXAMINATION BY MR. CADIGAN:</p> <p>16 Q. You just mentioned that...you</p> <p>17 indicated that someone at Kik or their counsel made</p> <p>18 the comment that the SEC didn't have a LaunchPad. Is</p> <p>19 that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Was that reflected in your</p> <p>22 notes of the meeting?</p> <p>23 A. In my notes?</p> <p>24 Q. Yes.</p> <p>25 A. No.</p> |

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| Page 187 | | | |
| 1 | MR. CADIGAN: | I have no further | 1 121 Letter dated November 2, 2017 from |
| | | | 2 Mr. McKee to Mr. Loke 140 |
| | | | 3 |
| 2 | questions. | | 4 122 Letter dated August 28, 2017 to |
| | | | 5 Finance Ministers from Manie Eagar 161 |
| | | | 6 |
| 3 | MR. SCHLEGELMILCH: | None. | 7 123 Article dated September 18, 2017 |
| | | | 8 by Ross McKee, Chris Hewat and |
| | | | 9 Liam Churchill entitled |
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| | | | 17 Ted Livingston entitled |
| | | | 18 "Canadian Residents Excluded from |
| 5 | --- | upon adjourning at 3:00 p.m. | 19 Next Week's Kin TDE" 183 |
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| 8 | 108 | Pat Chaukos' Background as listed | 8 |
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| 15 | | copied to Monica Kowal and Amy Tsai, | 15 |
| 16 | | dated July 25, 2017, | 16 |
| 17 | | Bates stamped SEC/OSCE 2071-2072 49 | 17 |
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| 19 | 111 | Letter from Ross McKee to Pat Chaukos, | 19 |
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| 47 | 120 | Letter dated October 19, 2017 from | 47 |
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| 50 | | | 50 |
| | | I hereby certify the foregoing to be a | |
| | | true and accurate transcription of the above | |
| | | noted proceedings held before me on the 5th | |
| | | DAY OF DECEMBER, 2019, and taken to the best | |
| | | of my skill, ability and understanding. | |
| | | } | |
| | | } Certified Correct: | |
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| | | } Tahleia Bishop | |
| | | } Verbatim Reporter | |

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| 38 | I, Pat Chaukos, have reviewed pages 4 to 186, | |
| 39 | and with the exception of the above-noted | |
| 40 | corrections, hereby agree to the accuracy of my | |
| 41 | statement recorded herein. | |
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